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Volume 8

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

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BLADEN S. RITZE, et al.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 20, 1947
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1888 Washington, D. C.,
Thursday, January 13, 1938.

1890 J. P. PARKER, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

I am at present employed with the Federal Trade Commission as an attorney-examiner and have been in the employ of the Commission for slightly over two years. During that period the general nature and scope of my duties has been the investigation of cases before the Commission.

Q. In the course of your official duties have you had occasion to interview a Mr. F. R. Johnson, president of the Aetna Portland Cement Company in Boston?

A. Yes, sir.

Q. Will you state when that interview was held?

A. June 8 and 9, 1937.

Q. Will you state how you came to have the interview with him?

A. I was assigned to the case for supplementary investigation, for the express purpose of calling on
1891 Mr. Johnson as president of the Aetna.

Q. Was that a supplemental investigating, supplementing work previously done by Mr. McDonald of the Commission's staff?

A. Yes, sir.

Q. Did you have with you at that time the documents which Mr. McDonald had obtained?

1892 A. Yes, sir.

Q. State in a general way just what subjects were touched on in your interview with Mr. Johnson, and give us an idea of the scope of the interview?

A. Well, the scope of the interview covered the history and more or less current activities of the Aetna Cement Company, with respect to his participation in the management of it, and the period of time which he devoted to the management of it.

Q. Did you discuss with Mr. Johnson any of the docu-

ments which you had in your possession, based on Mr. McDonald's prior investigation?

A. Yes, sir.

Q. I am showing you Commission's Exhibit No. 42-A to S, inclusive, and particularly calling your attention to exhibit 42-A to C, inclusive. Did you discuss that particular paper with Mr. Johnson? (Handing document to the witness.)

A. Yes, sir.

Q. How do you know that you discussed that particular paper with Mr. Johnson?

A. Well, this is what I personally regarded as so-called McDonald or Cree exhibit 27. I think it is so marked here on the face of it.

1893 I say I considered this personally the so-called Cree exhibit 27.

By Mr. Wooden:

Q. Was that mark on it at the time you held the interview?

A. Yes, sir, and I had made notes myself with respect to this and I wanted to identify it. It is an unsigned memorandum. It carries the date of November 21, 1935.

Q. Well, now, will you state what you said to Mr. Johnson about it and what he said to you about it?

1895 A. I asked Mr. Johnson if—

Mr. Leisure: May we have the time fixed, please?

Mr. Wooden: He has already fixed it, June 6 and 7. I think, 1937.

The Witness: June 8 and 9.

By Mr. Wooden:

Q. All right.

A. I asked Mr. Johnson if he recognized this 3-page memorandum, and he seemed to have difficulty remembering it, and—may I refresh my memory from my notes taken at the time of the interview?

Q. Yes.

A. (Examining document.) I remember distinctly Mr. Johnson stated that he presumed this memorandum was the one written by Mt. Stone.

Q. What Mr. Stone?

A. Of the Universal Atlas Cement. I asked him what was the occasion for it and why it had not been signed by Mr. Stone, and he stated that the memorandum was

written by Mr. Stone pursuant to a conversation held with Mr. Johnson either in New York City or Boston, he could not recall.

1896 Q. Did he fix the time when he held that conversation?

A. He couldn't fix it positively, but he said it was in the latter part of November. He did not definitely connect this memorandum with any specific date; he could not recall the date.

Q. All right, go ahead with you statement of the statements made by Mr. Johnson on that occasion.

A. May I bring in a few facts which are connected with the memorandum?

Q. Yes.

A. I noticed in the file which Mr. McDonald had given me, this memorandum unsigned, but evidently having some connection with other parts of the file, namely, a resume of WPA bids in Indiana received from certain manufacturers. I think reference to those bids and the resume is made in here, and I do not understand to which this particular memorandum applied and where it fitted in to the Aetna Company, and I questioned Mr. Johnson in that direction, and he stated at first that he presumed as I mentioned, that the memorandum had been written by Mr. Stone, of the Universal Atlas, and after I asked him about the files, it seemed that his memory was clearer, and he stated that Mr. Stone had made some complaint about the method by which the Aetna Company had submitted bids in certain sections and on certain Government contracts, and Mr. Stone had suggested that Mr.

1897 Johnson either correct the practices or advice his local manager in Detroit in that connection, and I understood Mr. Johnson to say that he had replied to Mr. Stone, to give him actual facts, that he did not want to annoy his managers by rumors, and it was Mr. Johnson's understanding that this memorandum was the result of his suggestion that Mr. Stone put his complaint in writing.

Q. Did you ask Mr. Johnson what he did with that memorandum when he received it?

A. Yes; I asked him at that time, and he stated that he did not keep a copy of it, but that he believes he must have sent it on directly to Mr. Lingeman, his manager.

1898 Q. Now, I am showing you Commission's Exhibit 34, and will ask you to state whether you discussed that with Mr. Johnson on the same occasion?

A. Yes, sir.

Q. Will you state what was said?

A. Well, the part that I was principally interested in clearing up by interview was the next to the last paragraph which states, "In shipping cement into the Peninsula, it should go in carload lots and no truck deliveries be made." That, taken in the light of the opening sentence, "at a meeting today, it was considered to be to the best interests," and so forth, I asked him about the truck shipment discontinuation, and he stated in substance that the truck deliveries would in effect disrupt the basing point system of quoting prices if advantage were taken of the differential between the cost of the trucking and the railroad rates, and I asked him further what the differential amounted to and what happened to it when they made bids, and I understood him to say—

Mr. Hershberger: (Interposing.) I object. He ought to state what he said. He cannot state an understanding of what the man said. Let him use his words.

Examiner Norwood: That is all that he can state.

Mr. Hershberger: I have an idea from the way that he is talking, that he is interpreting the thought that

1899 was expressed to him.

Mr. Wooden: I understand what you are saying now.

Mr. Hershberger: I am not discussing that particular question. I am discussing what the witness is talking about.

Mr. Wooden: I am illustrating.

Examiner Norwood: Objection overruled.

The Witness: Pardon me, may I clear that up?

Examiner Norwood: Yes.

The Witness: It has been six months since I talked to him, and I happened to have handled cosmetic cases and steel cases and every thing else.

Mr. Hershberger: If I may interrupt again, Mr. Wooden? You say it has been six months since you have talked with Mr. Johnson?

The Witness: Yes.

Mr. Hershberger: Do you mean to intimate by that that you are now recollecting what he told you six months ago?

The Witness: No, sir, I am merely refreshing my memory from a field report and notes which I took at that time.

Examiner Norwood: After your memory is refreshed, you are positive that the statements that you are making are true?

The Witness: Certainly I am positive, yes, sir. I merely use the phraseology, "understand" to mean that that was my understanding of what he said, and not that I don't know.

Mr. Hershberger: One further question. When did you make this memorandum? At the time of the discussion?

The Witness: These notes on the yellow paper are dated the 9th, or the 8th and the 9th; the typewritten copy was done on the 13th.

Mr. Hershberger: The yellow notes were made on the 9th, were those made at the time that you were talking to Mr. Johnson at the time that you went along with the discussion?

The Witness: Yes, sir. We are required to do that in most cases.

Examiner Norwood: Go ahead.

By Mr. Wooden:

Q. Had you finished about the trucking memorandum that you were talking about?

Examiner Norwood: Read the last answer of the witness as far as it has gone.

1901 (The answer is read.)

The Witness: (Continuing) That where a truck shipment was involved, that there was no reduction in the price, that they merely absorbed that as an additional profit if there was a differential.

By Mr. Wooden:

Q. Did you make any effort to locate in Mr. Johnson's files the two exhibits that you have been talking about?

A. Yes, sir.

Q. With what result?

A. I could not locate them.

Q. Did you make the effort to locate them before you talked to him about the copy you had, or after?

A. I asked him for his files with the view to refreshing his memory, especially since I had a copy of it myself be-

fore I talked with him. He brought the files out, and the entire file was no larger than that. (Indicating).

Q. For what period of time?

A. Well, after he permitted me to examine them, they had not been touched since I talked with him.

1902 Q. When you say "no larger than that," you mean a file approximately 3 or 3½ inches thick?

A. No, there were two files at the time; one bound book as far back as 1908; the other one was more recent and current.

Q. Did you find any other papers in the files submitted to you that bore upon the matters that you had under inquiry?

A. Well, you say "under inquiry." There were no other records such as appeared in Mr. McDonald's file which I had, except two pages of a 3-page letter. I think that is described in my field reports. There were other documents relative to the subject-matter generally.

Q. Did you discuss with Mr. Johnson anything as to his policy in preserving files relating to the affairs of the Aetna Company?

A. Yes, sir.

Q. What was said on that point?

A. I merely commented on the conspicuous absence of these letters and memoranda and asked him why he had such a small file, and he commented that he was given to much letter writing but very little letter keeping, and that he had instructed his secretary to clear the files periodically—I understood him to say every week or two weeks—of course, under his direction.

Q. You referred to finding in his file two sheets 1903 of a certain paper. Will you look at Commission's Exhibit 44-A and state whether or not that is the paper which you found a portion of in Mr. Johnson's file?

A. (Examining) No, sir, that is not it.

Q. Will you look at Commission's Exhibit 43-B, C and D, and state whether or not that is the document which you found a portion of in Mr. Johnson's file?

A. No, sir, I think you will find the one that I have reference to in Field Report 31-A.

Q. That was the McDonald numbering?

A. Yes, sir.

Q. Is not Commission's Exhibit 43-B, McDonald's number 31-A?

A. You are right. I was looking at my field report, which did not have reference to that number. I was looking for this number here (indicating).

Q. Now, will you look at Commission's Exhibit 44-A and B and on 44-B note the language, "See our filing November 5, 1935"? Did you discuss that matter with Mr. Johnson?

A. Yes, sir.

Q. What was said?

A. Mr. Johnson denied that he had ever seen a copy of the filing referred to in this memorandum.

1904 Examiner Norwood: Which memorandum is that?

The Witness: The one identified as Commission's Exhibit 44-B, on the second page thereof.

By Mr. Wooden:

Q. Did you discuss with him the matter of the filing itself that is referred to there?

A. Yes, sir.

Q. What was said?

A. Well, he stated that he had not been informed as to the contents of such a filing, that he was ignorant of it, and that it was done by either Mr. Lingeman or Mr. Cree from the Aetna's Detroit office, with the Cement Institute of Chicago, as well as the prevailing base prices to be filed by Aetna.

Q. Did you discuss with Mr. Johnson anything with regard to sales by the Aetna Cement Company to the Indiana Farm Bureau?

A. Yes, sir.

Q. Will you state what was said on that subject?

A. Well, Mr. Johnson denied any responsibility for or knowledge of a concerted action between his firm and competitors with regard to possible collusive bidding or filing of prices which were identical.

Q. I am asking now about the Indiana Farm Bureau Cooperative Association, sales to it as a recognized dealer.

A. Oh, I beg your pardon. He admitted the knowledge of a controversy between Aetna and his competitors
1905 with respect to what the general cement industry had recognized as a so-called bona fide dealer.

Q. And what did that have to do with the Indiana Farm Bureau?

A. It seems there was a contention that the Indiana

Farm Bureau had not qualified under the old NRA code in the definition of a dealer and was thereby eliminated as a proper customer.

Q. Did you discuss with Mr. Johnson on that occasion and in that connection anything with regard to the effect of sales to the Indiana Farm Bureau upon prices in Indiana?

A. Yes, sir.

Q. What was said about that?

A. He felt that if he continued to sell to them that he would disrupt the price structures usually followed in that territory.

Q. You say he felt that. What did he say?

A. He told me that he felt that if he continued to sell to them that he would be disrupting the price structure.

Q. Did you discuss with Mr. Johnson on that occasion how it came about that sales continued to be made to the Indiana Farm Bureau?

A. Yes, sir.

Q. What was his statement on that?

A. Well, he stated that the details of the entire 1906 controversy had mosly been handled by Mr. Lingeman and Mr. Cree, and he did admit that a decision had been reached not to sell all of the units of the Association.

Q. The Farm Bureau, you mean?

A. Yes, sir, and that a mistake had been made evidently by Mr. O'Neal, who is the bookkeper in Detroit for Aetna.

Q. Did he state by whom the decision had been made not to sell certain units of the Indiana Farm Bureau?

A. Mr. Lingeman and Mr. Cree, who handled the decision.

Q. Did you discuss with Mr. Johnson in that connection anything concerning his own contacts with competitors on the score of selling the Indiana Farm Bureau?

A. Yes, sir.

Q. What was that?

A. Mr. Johnson admitted that Mr. Pearson, of the Lone Star Cement Corporation, had complained to him that certain units of the Association were unable to qualify as bona fide dealers.

Q. Did you discuss with Mr. Johnson on that occasion

his reasons for having discharged Mr. Cree and requesting the resignation of Mr. Lingeman?

A. Yes, sir; I asked him pointedly what the cause for their dismissal was, and he stated that the almost simultaneous resignation of both was accepted because of their numerous mistakes and general congestion of sales matters.

1907 Q. Did you ask him what the nature of the mistakes was?

A. Yes, sir, and he stated the principal objection to their way of doing business was the inefficiency in determining who was to be sold and on what terms.

Q. Well, on what terms? Was there anything said about the prices at which they sold?

1908 A. Not positively with respect to prices in any particular area, but with respect to whether or not they were dealers authorized, or recognized by the general industry. I think there was a difference there between the prices at which they quoted certain purchases.

Q. Did you discuss with Mr. Johnson anything concerning the base prices in Michigan and the relation of his company to the Huron Company in that connection?

A. Yes, sir.

Q. What was said on that point?

A. Mr. Johnson said that his firm was not large enough to antagonize such large firms as the Huron, and that if they did buck them it would be disastrous for him, because they were in the position to dictate the prices and he had to fall in line.

Q. What if anything was said about the base prices in that connection?

A. He stated that if they opposed any of the base prices established by the Huron that counter-quotations by Huron would be fatal to his business, he could not operate in a manner which would permit him to fight Huron.

1909 *Cross Examination by Mr. Leisure.*

Q. Mr. Parker, on that first memorandum that we discussed, I forget the number, the one where he told you he presumed it was written by Mr. Stone—

A. (Interposing) Yes, sir.

Q. (Continuing)—did he tell you that he saw Mr. Stone writing, or received it from Mr. Stone?

A. To start off with, Mr. Johnson told me he presumed that it had been written, but after further questioning, as my notes show, he stated that the letter or memorandum was the result of his suggestion that Mr. Stone put his objections in writing. I do not know that he actually saw him write it, I do not think he did, he did not tell me he actually saw him write it, he received it on his desk. Whether by mail or by messenger, I do not know, he did not tell me that.

Q. In other words, after you discussed the matter for some time he told you that he assumed that that was a memorandum that had been written pursuant to these things that you have just described, is that it?

A. No, sir.

Q. He did not become any ~~more definite~~ in his assurance to you that Mr. Stone had written it and sent it to him, did he?

A. Yes, that is why I stated that.

1910 Q. Now just tell us, for the purpose of the record, how definite he was that he saw Mr. Stone write it, or that he received it from Mr. Stone?

A. You see when I called his attention to that particular document and asked him if that was the one which he had from Mr. Stone or whether Mr. Stone was the one who compiled it he looked at it and he said—

Q. (Interposing) Oh, you explained to him that it was written by Mr. Stone, is that it?

A. No, sir.

Examiner Norwood: Let him finish his answer.

The Witness: (Continuing)—and he said, "I presume Mr. Stone wrote that." I said then, "Do you remember any of the circumstances surrounding your receipt of it? Do you know when it came in and when your so-called meeting with Mr. Stone was and what you did with it after you got it, and whether or not you kept a copy of it?" Then—

By Mr. Leisure:

Q. (Interposing) I notice you are reading from pencil notes instead of from your field report?

A. Yes.

Q. Is the testimony that you are giving just now from those pencil notes, is that also in your field report?

A. Yes, sir.

1911 Q. Why do you read from your pencil memorandum instead of from your field notes in this answer?

A. In this instance, the word "presumably" is important, and the way in which it appears in my field notes means that I at that time got the first answer presumably, and later on after discussing it, his memory became clearer.

Q. Now, Mr. Parker, what information did you have at that time when you first started discussing this memorandum with Mr. Johnson, what information did you have and where did you get it from, to the effect that Mr. Stone had written that memorandum?

Mr. Wooden: There is no showing here in any testimony or anywhere else that he did so testify.

Mr. Leisure: This is cross-examination.

Examiner Norwood: He may answer.

Mr. Wooden: But do not assume something to be true that has not been shown to be true.

The Witness: Frankly, I don't know that I had any assumption that Mr. Stone wrote it. After reading the entire file from Mr. McDonald's records, which he had forwarded to me, there are telegrams and letters, and other data throughout the file, and in conjunction with it, this resume of bids, and I did not assume that anyone wrote it. I was there to ask Mr. Johnson.

By Mr. Leisure:

1912 Q. When you started talking to him about Mr. Stone having written it, did you have some idea that it would be nice to be able to say that Mr. Stone did write it, and you would like to get that information from Mr. Johnson?

A. Frankly, I never saw Mr. Stone in my life. If he is in this room, I don't know him. I have no interest in Mr. Stone.

Q. You, as an attorney developing this case, knew what his responsible position was with an important company, didn't you?

1914 A. Mr. Leisure, if I may say—

Q. (Interrupting): Won't you just answer the question? Did you know that or did you not know that about Mr. Stone when your went to examine Mr. Johnson?

A. Only by reference to the letters and correspondence of Mr. Stone that was in Mr. McDonald's file.

Mr. Leisure: I ask that the witness be instructed to answer the question. He says, "Only by something else." I want to know whether he did or did not know when he went to examine Mr. Johnson that Mr. Stone had an important position in the industry.

1915 The Witness: I knew by seeing reference to him as an officer of—what is it; the Huron?

Mr. Wooden: Universal Atlas.

The Witness: Only by reference.

By Mr. Leisure:

Q. Well, you had made some study of the problems you intended to inquire about before you went down to Boston as an attorney for the Federal Trade Commission, before you went down to Boston to examine Mr. Johnson, hadn't you, Mr. Parker?

A. Naturally.

Q. So that then you did know who Mr. Stone was?

A. Why, certainly, I knew what position he held.

Q. No, it has taken us all that time just to get that simple answer. When you talked to Mr. Johnson about this memorandum, did you discuss the attached bid? Did you discuss this tabulation that Mr. Wooden asked you about that seems to be attached by someone to the so-called Johnson or Stone memorandum?

A. Yes, sir.

Q. You did. Was it suggested by either you or by Mr. Johnson that that was also a part of the original memorandum that was prepared also by Mr. Stone?

A. Yes, sir, I think that appears on the face of the memorandum.

Q. It appears on the face of the memorandum.

1916 Did you have that idea when you went there, or did you get it after you talked to Mr. Johnson?

A. You mean—

Q. (Interposing): What appeared on the face of the memorandum as you have just stated now?

A. I think the record speaks for itself. It makes reference to it.

Q. That is not the question; the question is whether or not you had had that idea in your mind when you called on Mr. Johnson, or whether you obtained it after talking to Mr. Johnson?

A. You mean that these were a part of the memorandum?

Q. Yes; just what you have just said.

A. I understood it to be a part of it before I went there.

Q. Before you went there?

A. Yes, sir.

Q. So, after talking to him, did you also get the impression from him that he had prepared those tabulations—that Mr. Stone had prepared those tabulations also?

A. Well, the questions I asked Mr. Johnson were all with the understanding that the three-page memorandum and the attached or presumably attached resume of bids were all in one group as an entire instrument.

Q. So you had the impression as you have now said, before you went there, and you had it after you talked
1917 to Mr. Johnson that this tabulation having to do with Michigan bids was prepared by Mr. Stone?

A. Now, I did not say that I thought it was prepared by Mr. Stone before I went there. I said that I thought it was a part of the memorandum. That is in my last answer.

Q. Now, without being technical, didn't you say that memorandum, you got the impression was prepared by Mr. Stone? I went over that very carefully?

A. At first.

Q. Now, do you want to change your answer; do you want to divide that up and say that the tabulations were prepared, in your opinion, by someone else?

A. No, sir, I do not. I will stick to the first one.

Mr. Wooden: I don't think his opinion as to who prepared it has anything to do with it.

Mr. Leisure: Well, his assumption when he went there and after he talked to Mr. Johnson has.

Mr. Wooden: Just stick to what Mr. Johnson told him.

By Mr. Leisure:

Q. Now, you also talked to Mr. Johnson about the effect that certain sales would have upon the basing point, and Mr. Johnson gave you his theory of the basing point, is that correct?

A. No, sir, I asked Mr. Johnson if he could ex-
1918 plain the basing point systems, to me, and he could not in detail.

Q. Now, I would like to have you either read from your field report or have the reporter read what Mr. Johnson's answer was on basing point. Can you find that quickly without taking too much time?

(The following portion of the record is read:

"I asked him about the truck shipment discontinuation and he said in substance that the truck deliveries would in effect disrupt the basing point system of quoting prices if advantage were taken of the differential between the cost of the trucking and the railroad rates, and I asked him further what the differential amounted to and what happened to it when they made bids, and I understood him to says" Here the answer was interrupted and continued.) "—that were a truck shipment was involved, that there was no reduction in the price, that they merely absorbed that as an additional profit if there was a differential.")

By Mr. Leisure:

Q. Now, going on from that point. You say when you questioned him about the basing point, he could not explain it to you to your satisfaction?

A. No, sir, he could not.

Q. Now, Mr. Wooden asked you about Exhibit 43 and he asked you if you found a portion of it in Mr. Johnson's files. Will you state for the record so that it will be 1919 clear, what portion you found and what portion there is there that you did not find so the record will be clear on that?

A. That is 43?

Q. Yes. Exhibit 43-D, I understood Mr. Wooden to say, and then you had some misunderstanding as to which exhibit was referred to.

Mr. Wooden: I got the wrong one first, and on the second attempt it was cleared up.

By Mr. Leisure:

Q. Perhaps it is Exhibit 44. Let us find what portion you found in Mr. Johnson's files?

A. Is that the one you had reference to? (Exhibiting paper to Mr. Leisure.)

Q. I did not have it before me.

A. Is that the one that was being discussed at the time? (Indicating)

Q. I am trying to find out what portion of the exhibit, either 43 or 44 you found in Mr. Johnson's files?

A. The first two pages.

Q. You found the first two pages of exhibit what?

A. Federal Trade Commission Exhibit 43-B and Mc-

Donald Exhibit 31-A. That is the way I identified it. That is how the confusion came up at first.

Q. Are Mr. McDonald's exhibits in evidence here?

A. Yes, sir. You see, Mr. Leisure, when the
1920 examining attorney submits his evidence, he stamps it with his exhibit number; when the Commission elects to submit it in evidence at a hearing, they may assign a different number to it.

Q. And you found the first page—

A. (Interposing): The first two pages.

Q. The first two pages?

A. Yes.

Q. And the exhibit has in all three pages as now marked in evidence?

A. Yes, sir.

Q. Did you ask Mr. Johnson about that third page?

A. Yes, sir.

Q. What did he tell you about the third page?

A. I will read from my field report if I may.

Q. Yes.

A. (Reading) "The informant could not recall what or where the third page of the above-described memorandum was and stated it was probably only a complimentary close and having no particular significance had been deleted from the file."

Q. When you had this talk with him about his clearing his files, did you make a note of that on your field report?

A. Yes, sir.

Q. Does your field report show that he did that every two weeks? May I see that?

A. If you like.

1921 Q. Show me where you have that, please; that he cleared his files every two weeks?

A. (Reading) "Informant habitually instructed his secretary to clean out his files and submit all prospective deletions to him for approval." The period of time I remember from the conversation; it does not appear here as a week or a two-week period.

Q. When you stated on the direct, you stated that you were testifying from certain notes that were made at the time, isn't that so?

A. Yes, sir.

Q. And it now appears that your notes do not show anything about his clearing his files every two weeks, isn't that so?

A. Well, Mr. Leisure, when we make notes—

Q. (Interposing) Answer the question; isn't that so, yes or no?

A. I said that I was quoting from the notes to refresh my memory.

Q. Isn't that so, yes or no? Answer the question, please?

A. Will you restate it, please?

Mr. Leisure: Read the question, Mr. Reporter.

(The question is read.)

The Witness: No, sir.

By Mr. Leisure:

Q. That is not so; all right. Will you take up
1922 your notes and read, and just take your time and find it, where your notes state—the notes that were made at the time—that Mr. Johnson cleared his files every two weeks?

A. (Examining paper)

Q. Not your pencil notes.

A. It does not appear there.

Q. Then the answer is "yes" and not "no," isn't that so?

A. I disagree with you. It is a matter of refreshing my memory.

Q. All right; take up your notes and read to the Examiner where it says he cleared his files every two weeks. Give us the page and paragraph.

A. It does not state that.

Q. It does not so state?

A. No, sir.

Q. Then that answers my question. Now, when you talked to Mr. Johnson, did you tell him that anything that you found that was damaging you were going to use against him?

A. No, sir.

1923 Q. Did you appear on a friendly basis, just talking things over, or did you tell him you were going to write out what he told you?

A. He knew that, because he gave me evidence from his files for copy purposes.

Q. When you wrote up these conclusions of yours did you check them with him to see if he disagreed with any of your conclusions, the ones you offered in evidence by oral testimony?

A. At the time my field notes were written in pencil I read them to him and discussed them with him.

Q. Did you talk to him about the final copy after you got it up?

A. Mr. Leisure, this was written on the train going to Cleveland. I did not have it in Boston.

Q. Did you ever send him a copy of it?

A. No, sir.

Mr. Leisure: That is all.

Examiner Norwood: You may re-examine him.

Mr. Hershberger: I have only one question.

1924 *Cross Examination by Mr. Hershberger.*

Q. Did he make any suggestion to you that Mr. Stone might have written the memorandum that is identified as Exhibit No. 42-A?

A. No, sir.

Q. Was Mr. Stone's name mentioned in any of your conversations with your superiors or associates before you went to Boston?

A. The file was reviewed piecemeal very briefly. The treatment of the case, the evidence to be developed was said to be upon, but I do not think anyone's particular name was mentioned.

Q. Did I understand you to say a while ago, in answer to Mr. Leisure's question, that when you talked to Mr. Johnson you asked him if Mr. Stone had written it?

A. Yes.

1925 Q. What induced you to ask the question or make the suggestion that Mr. Stone had written it?

Mr. Wooden: I protest the statement implied in the question, Your Honor, because he has misstated what the witness testified to.

Mr. Hershberger: He just stated so.

Mr. Wooden: I know what he stated.

Examiner Norwood: Read the question, Mr. Reporter.

(The question was read.)

The Wooden: That is a misstatement of what the witness testified.

Mr. Hershberger: He answered "Yes" to that question.

Examiner Norwood: Answer the last question.

The Witness: Will you please restate it?

Examiner Norwood: Read the question.

(The question was read by the reporter.)

A. I have here a memorandum prepared by me at the time the case was assigned, when I reviewed the files,—you see we have to go through the file and at least understand it before we can go out and discuss it,—and certain questions came to my mind in the light of various letters, for the location of those letters through the file, and as they came to my mind, for settlement with Mr. Johnson or with anyone else, I made notations on them, and
1926 at various instances these notations indicate that they might have been written by Mr. Stone as the result of his conference with Mr. Johnson in either New York or Boston. That is how I happened to ask him about it. I have a number of firm names here, with men's names, the firms they represent, and it might have been any one of them. Frankly, it might have been Mr. J. B. Johns of the Medussa, Mr. Rooney of the Huron, Mr. Lucas of Petosky, and I could go on and name three or four or five or six of them, if you would like, but they are all names which appear in the file.

By Mr. Hershberger:

Q. Well, the point of it is that you did, prior to going to Mr. Johnson, have some idea in your mind that it might have been Mr. Stone, and you asked him the question whether it had been Mr. Stone?

A. Yes, sir.

Q. And that was the way you opened your conversation with him, was it not?

A. No, I did not open my initial conversation in that way. I broached that subject in that way, yes.

Mr. Hershberger: Well, I think that is all.

Redirect Examination by Mr. Wooden.

Q. Mr. Parker, you had in your possession there this anonymous memorandum dated November 21, 1935,
1927 you wanted to find out who was the author of it, if possible, is that right?

A. Yes, sir.

Q. Did you ask Mr. Johnson who was the author, or did you ask him, "Did Mr. Stone write it or did Mr. Lucas write it, or did Mr. Johns write it?" or what did you ask him?

A. I asked him at first if he knew what it was and he said he did not remember very well.

I said, "Do you know who wrote it?"

He said, "Let me see it further," or something to that effect, and I picked up my memorandum and the first name I came to was Mr. Fred Stone; and I said, "Did Mr. Fred Stone write it?"

Then his memory became refreshed, evidently, and he recalled, and he said, "Well, it is presumably Mr. Stone's."

Then I discussed the meeting with him and he acknowledged that he requested—

Q. (Interrupting) Did you have any more reason to believe at that time, in your own mind, that Mr. Stone was the author rather than some of these other men whom you had on your list?

A. No, sir.

Q. And you would have asked him about the others, too, would you not, if you had not gotten the first answer?

A. I was going down the list. I was going to exhaust the possibility of authorship. I knew the people 1928 were in the file by reference.

Q. Did you have any reason to believe, or did it enter your mind before you talked to Mr. Johnson, that Mr. Stone was more likely to be the author of that than any of the other gentlemen?

A. Certainly not.

Mr. Wooden: That is all.

Recross Examination by Mr. Leisure.

Q. In other words, you had a group of names and you went there with the idea that you would have liked to show that this memorandum was written by one of those? As a Government investigator you were interested in showing that this memorandum was written by one of the names you had on your paper, is that right?

A. No, sir.

Q. What did you have the names written down there for?

A. Mr. Leisure, these names were referred to in various conferences in various places, memoranda of one sort or another, transcriptions of telephone conversations, all having a connected relation or bearing on each other, and

with that in mind my natural curiosity as to an unsigned memorandum would prompt me to seek to know who wrote it.

Q. Were any of those names connected with that memorandum in any way before you went there, any of
1929 these important officials whose names you had written down?

A. Yes, sir.

Q. Were they connected with the memorandum?

A. Not with the memorandum but with facts that dealt with the memorandum.

1930 EDWIN C. ECKEL, called as a witness on behalf of
1931 the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

My present business is that of Chief Geologist for the Tennessee Valley Authority and consulting geologist for the Puerto Rico Reconstruction Administration. I have been with the T.V.A. in that capacity since the fall of 1933. I am a geologist by profession. Prior to my association with the T.V.A. as Chief Geologist, my previous experience in connection with the cement industry was that I had written official reports on several states and one of the United States in general. I have examined a great many cement quarries for private companies while I was on the Geological Survey. After I resigned from there I examined a number of cement quarries in various countries for private companies. During the war I was detailed to operate some leased French cement mills
1932 for engineer troops. After the war I went back to the consulting business again and examined some more property. I was in actual charge of production of cement in France during the war and at the end I had charge of the production, transport and distribution
1933 of all cement for the A.E.F. I formerly had a rather wide acquaintance among the cement officials in this country. Up to the wartime I knew a great many of them. After that my work drifted into iron and steel very largely and in foreign countries very largely. I was in Canada and France most of the time so that I rather lost track of

the present generation. The scope of my activities with T.V.A. so far as cement matters are concerned is a very minor portion of my work. My main job there is dam foundation in cement. I selected several sites from possible sites for cement manufacture in the Muscle Shoals region and for a little while, I sat in on different conferences with the industry. After that pressure of work on the dams grew and other men were put in on the conferences so that after fairly early in 1934, I do not recall having been at any of those meetings. Up to that time I had been at several.

Q. What was the object of the meetings that you refer to?

A. That was supposed to arrange a price base that we could—you see, we were going to use six or eight millions of barrels of cement scattered over eight or nine hundred miles of river, and in each case there was a different 1934 rate situation and different handling situation, and I think the Board wanted to make sure that they would have a cement supply and at something like a reasonable price over a period of six or eight or ten years at all of these points. It was a rather complicated thing. You could not answer it offhand. The industry was just coming out of a very terrible depression, and any arrangement made with a single company at the moment would have been open to breaking down if that company went broke later on. We did not know the depression was going to stop then.

Q. Was one question involved in the conferences as to whether you would buy your cement or build your own plant and make it?

A. Yes, sir.

Q. Did you have anything to do with preparing estimates or reviewing estimates of the cost of the construction and operation of such a plant?

A. Both. Over quite a number of possibilities, so that the range was very tremendous.

Q. Do you know Mr. Affleck?

A. I did while he was alive.

Q. Who was he?

A. President of the Universal, and afterwards President of the Universal Atlas.

Q. Do you know Mr. Stone?

1935 A. I don't know Mr. Stone.

Q. Do you remember having an interview with Mr. Affleck sometime in May 1934?

A. I probably stopped in Chicago on my way to California to see Treanor.

1936 Q. Do you have any present recollection of the substance of your talk with Mr. Affleck?

A. Well, we almost certainly talked about the affairs of Atlas, in which we were interested. We probably talked about the interests of the cement industry in general. They were going to the Coast to Boulder Dam, I think. The Association was meeting there, I think, that spring, and I was going down to see Treanor at Riverside for the T. V. A.

Q. Can you add any more from your present recollection as to what was said in the course of your talks with Mr. Affleck at that time?

A. Not from my present recollection.

Q. Did you make a record at the time of what occurred of what was said and submit it to any of your superiors in the T. V. A.?

A. I could not recall that offhand.

The witness identified Com. Ex. 340 as supposedly a copy of a letter dated May 5, 1934 to Doctor Arthur

1937 Morgan, and signed by the witness in type.

Q. Is he chairman of the board?

A. Chairman of the board.

Q. Does that serve to refresh your recollection as to the substance of your talk with Mr. Affleck on the occasion that you have already referred to?

A. I don't recall that at all, but on the other hand it is a very reasonable set of statements for me to make considering the way I felt about steel and cement.

Mr. Wooden: Your Honor, I offer this paper for the record as a memorandum made by the witness at the time in the regular course of his duties as an employee of T. V. A.

Mr. Leisure: If your Honor please, I object to the exhibit on the ground that it is incompetent, immaterial and irrelevant, being a memorandum between two departments of the government, and therefore in nowise binding upon any of the respondents in this case. I further object on the ground that no proper basis has been laid for

1938 offering it in evidence. It is a carbon copy or a typewritten copy.

By Mr. Wooden:

Q. Will you say, Mr. Witness, whether that memorandum stated the facts as you knew them at that time?

A. Why, I assume that it did. I am not accustomed to lying about things; but my memory on that subject is absolutely zero. I tell you I am pretty sure of seeing Affleck. You see, we had some few interests in common, but the converstaion I am basing entirely on that copy.

Examiner Norwood: Can you testify to the truth of the copy; of the contents of that paper?

The Witness: I am doing my best to say that I recall the thing at the moment, but if I wrote it at that moment, I probably believed it at that moment.

Examiner Norwood: You would not have written it unless you believed it?

Mr. Leisure: There is no evidence that he wrote it yet, if your Honor please. He has no recollection of having written it at all.

Examiner Norwood: He says that is his signature.

Mr. Leisure: No, it is a typewritten signature. He says he has no recollection of it.

The Witness: I am not trying to evade this thing, but I really do not remember this letter. Since it is there, I assume that I probably did write it. I had a great
1939 deal of work in those days.

By Mr. Wooden:

Q. Does it carry the stamp of the T. V. A. as a part of its files?

A. Yes, it is stamped as filed November 28th; it was supposedly written on November 5 and went to the files on November 28th.

Mr. Leisure: I would like the record to show that that is not an original document; that is a copy and not a carbon copy.

Examiner Norwood: Objection sustained.

1940 Mr. Wooden: Your Honor, I not only take an exception, but I serve notice that the matter will be appealed to the Commission.

Examiner Norwood: That is counsel's privilege. As I understand it, this witness does not recall any of the facts stated in that paper, does not recall having written it, and will not testify to the truth of its contents.

1941 Q. Before we leave that, Major Eckel, did you look at that memorandum before you went on the stand?

A. Yes, sir.

Q. Didn't you recognize and admit to me that it was genuine?

The Witness: I think I told you at that time that I did not recall the conversation or the letter, but that I had no reason to doubt the letter in that form on the face of it.

By Mr. Wooden:

Q. And you have no reason now to doubt it?

A. No; no more now.

Mr. Wooden: I beg to reoffer it, Your Honor, on the supplementary showing just made. He has no doubt about the authenticity of that paper as having been prepared by him.

Mr. Leisure: It is a very different thing as far as the rules of evidence are concerned, that a witness has no about the existence of some original document of that
1942 kind, and it is offered to him, from a statement attempted to be adduced by counsel at the present time.

Examiner Norwood: I do not think that you have shown that that paper reaches the dignity of evidence. Objection sustained.

1944 Q. Was it your custom, Major Eckel, to report matters of that sort to your superiors when they came to your attention?

A. Well, I was on my way to California on a job for Arthur Morgan, so I naturally wrote back anything of interest that happened. I wrote him from Riverside when I met Treanor. That must have been written after I got back.

Q. Apparently you are wrong on that, because you were talking about going on west.

A. I don't remember where I could have written it, that's all.

Q. Did you have a talk with Mr. Affleck on this occasion in which you discussed the question of idle capacity of mills?

A. Steel and cement both, yes, sir. The mills were running about a third full.

Q. Did you discuss with Mr. Affleck on that occasion anything concerning his hopes as to the prices that might be obtained for cement?

A. No, I would not put it that way. I said flatly as I believed then, that if we scrapped about a third of our steel and cement capacity, the rest of the mills would be better off. He did not agree with me; he thought that the thing could be salvaged without that.

Q. Did you discuss with him anything concerning the effect of prices upon the poorest and worst located mills?

1945 A. Except to say that if you had to salvage the poorest mills, you would have to keep high prices and that was not the way to come out of a depression.

Q. That is what you said?

A. Yes.

Q. What did he say?

A. I think he disagreed with me. I don't know to what extent now.

Q. Now, Major Eckel, I am showing you a paper marked 342 for identification, and will ask you if that is in your handwriting?

A. (Examining paper.) Yes, I think that is.

Q. Is that a duplicate of the memorandum marked 340 for identification?

A. Yes, it is.

Mr. Wooden: Now, your Honor, we have the original in the witness' handwriting of the document which was formerly marked 340 and it is marked 342, and I offer both. I renew the offer of 340 and I make a new offer on 342.

1946 Mr. Leisure: May I ask just one question?

Examiner Norwood: Yes.

Mr. Leisure: Mr. Eckel, as the result of your having your memory refreshed on your memorandum, are you able now to say that this is a document that was prepared by you or someone under your direction?

The Witness: No, not that one. (Indicating Exhibit 340.) This is obviously (indicating Exhibit 342) a photostat of a letter which I wrote by hand. That was what was puzzling me, because I had no typewriter on this trip and I did not stop anywhere to write any letter.

Mr. Leisure: So it appears that you never did write this Exhibit 340?

The Witness: No, I did not.

Mr. Wooden: I don't care about 340, now, since we have 342.

Mr. Leisure: When I say you did not write this letter, I mean it appears clearly on the record that you were correct, that you never did write Exhibit 340 which is the typewritten one?

The Witness: I did not.

Examiner Norwood: This is your handwriting and your signature on 342?

The Witness: Yes, sir.

1947 Examiner Norwood: I ask counsel why he did not introduce this in the first place?

Mr. Wooden: I did not have it.

Mr. Hershberger: I want to make an objection that 342 is self-serving.

Mr. Leisure: Your Honor, we have no objection to 342 except that it is between two departments of the government.

Mr. Wooden: No, not two departments; inter-departmental.

Mr. Leisure: It is an inter-departmental memoran'um and is therefore not binding on any of the respondents that I represent, and I object to it being received on that ground.

Examiner Norwood: Objection overruled. We will receive 340 as a matter of convenience, because it is a typewritten copy and easy to read, and 342 is received as marked.

(COM. EXS. 340 and 342 were offered and received in evidence.)

Mr. Wooden: The witness points out that there are some notations on the bottom of his handwritten letter which are not his. I think they may be disregarded. What is it? (Indicating.)

The Witness: I don't know.

1948-49 Mr. Wooden: (Reading.) "Copy to Fedder and to Leeds."

The Witness: They were on the committee at that time.

Mr. Wooden: I want to read Exhibit 342:

"May 5, 1934.

"Dear Mr. Morgan:

"I stopped at Chicago enroute to call at Universal Atlas cement office and met Messrs. Affleck (president), Stone (vice president), and Van Zandt. We talked cement in-

dustry matters in general—but in the course of the talk Affleck spoke of idle capacity and made it clear that he still hopes to hold prices high enough to permit the poorest and worst-located mills to make money. I said, not as representing T. V. A. but as an old acquaintance, that to my mind both steel and cement companies would have to write off their poorest investments or else we would be back again to worse than 1929-1933.

"Affleck and other eastern people will be at Boulder Dam Sunday and Monday; and I expect Treanor to talk with them before I meet him.

Very truly yours,

Edwin C. Eckel."

1950 Mr. Leisure: Now, from the reading of the document, Your Honor, it further appears that the witness is not quoted in the instrument to be expressing these views or statements officially, and as a private citizen certainly anything that he said on this date can not bind the respondents in this case. So I renew my objection to the document and ask that it be stricken from the record.

Examiner Norwood: Objection overruled. We will consider it according to its weight.

By Mr. Wooden:

Q. Now, Major Eckel, I am showing you papers marked Commission's Exhibit 341-A and B for identification. Will you state what they are (handing documents to the witness)?

A. A letter to Dr. F. C. Tryon, associated with the Bureau of Mines. It is a letter in relation to a book which the Brookings Institute was getting out on American Capacity to Produce, or something like that. He had asked my judgment on how to estimate cement capacity, and I explained it was a rather difficult thing. That is dated November 20, 1933.

Q. Were you at that time giving any consideration to the advisability of whether TVA should construct its own cement plant instead of buying its cement?

A. I am not sure about the exact date there, Mr.
1951 Wooden. In November I had looked over the situation at Norris and reported that there was enough stone to carry on, but we had already started work at Norris so there was not any great inducement to build the

plant, regardless of prices, and so that was dropped. I do not think we talked about the Sheffield or Cowan matter until later in the year.

Q. What were the considerations that led you to consider the building of a TVA plant?

A. I am not at all sure that I was the one who was led to consider it.

Mr. Leisure: I object to the question.

The Witness: I do not think I was the originator of the idea.

By Mr. Wooden:

Q. I did not ask you if you were the originator of the idea, but did you not give it consideration?

A. Yes, of course. My job was to find a site for it.

Q. I am asking you what were the circumstances that antedated or preceded your giving it consideration.

A. The first thing was an offer of a small, a rather cheap plant, that was the Cumberland Cement Company at Cowan. Messrs. Garrity, Locker and myself went there and decided it was in bad shape. It had not been operated over twenty per cent capacity, owing to bad business, that it might be operated fairly economically, but the only dam that could be served would be Chica-
1952 mauga, and our big tonnages would be at Wheeler, and Pickwick. There was the further difficulty that I do not think the man who offered it to us could deliver the thing.

Q. Were there any circumstances connected with the purchase of cement about that time that led you to consider the building of your own plant?

A. Not that I know of. I had nothing to do with the purchase of cement, you know.

Q. Directing your attention to the last paragraph of Exhibit 341-A and B, your letter to Dr. Tryon, I will ask you if that refreshes your recollection on the point I just asked you about (handing document to the witness)?

A. That is probably true, at least I thought so at the time. That was obviously after the Cowan offer had been made to us. That came out of a clear sky.

A. With reference to a hold-up of the Government that you have refreshed your recollection about by reference to this paper?

A. With reference to a hold-up of the Government that

dates back to the Illinois case, which I had nothing to do with, but read of in the papers.

Q. What do you mean by "the Illinois case"?

A. The thing that Secretary Ickes was so worried about.

A. I still want to know what the Illinois case was.

Mr. Leisure: Now, I object to what the Illinois
1953 case was as not material or relevant to the issues in this case. We can only try one case at a time here and I object to going into any other cases by this witness.

Examiner Norwood: What does he mean by the "Illinois case"? What do you mean by the Illinois case, Mr. Witness?

Mr. Wooden: That is what I want to find out.

The Witness: Well, there had been a good deal of discussion, I think, in 1933, about some highway bids in Illinois. The Governor of Illinois publicized the case a good deal and Secretary Ickes took it up, so that everybody read about it. I fancy that was chiefly in my mind when I wrote to Dr. Tryon.

By Mr. Wooden:

Q. That was in the early part of 1933, though, was it not?

A. I do not know. I do not remember the date at all.

Q. This was in November?

A. Yes.

Q. Then, as I understand it, you wrote here what you considered to be the facts of the situation at that time?

A. I still think it pays to have one mill that you can use to argue with.

Q. What do you mean? One Government mill?

A. One Government mill in every district.

1954 Mr. Wooden: I offer Exhibit 341-A and B.

Mr. Leisure: Your Honor, here is an exhibit being offered, a letter between this witness who has been called by the Government, and a third party, namely, a Dr. F. C. Tryon, who has no connection with this case, who is not named as a respondent. It seems to me it is going way beyond any of the rules of evidence to allow that kind of material to be offered on any basis. I object to it as incompetent, irrelevant and immaterial.

Examiner Norwood: Is this an official report of The Tennessee Valley Authority?

Mr. Wooden: It is from the files of the Tennessee Valley Authority.

The Witness: It is not official in any way; it is a letter from myself personally to Dr. Tryon personally.

Examiner Norwood: Can you testify independently of the facts stated herein?

The Witness: That was my impression at the time.

1955 Examiner Norwood: I think, over objection, that a paper like this, with the witness on the stand, and who can testify to the facts contained therein, over objection should not be received. Objection sustained.

By Mr. Wooden:

Q. Major Eckels, did you write to Dr. F. C. Tryon about November, 1933, and make these statements to him: "The cement situation here has already become somewhat acute, and it is entirely possible that the Tennessee Valley Authority will build or buy one or more mills of its own. Unless the manufacturers come to look upon the Government somewhat less in the light of an easy prey I think that the same policy may have to be extended all over the United States, that is to say, that a few Government-owned regulatory mills will have to be established merely to restrain prices from exorbitant levels"?

Mr. Leisure: Now, I object to the question and ask that it be stricken from the record. The counsel was reading from an exhibit not in evidence. Whatever this witness may have said to some third party at that time is not binding on the respondents in this case. It is incompetent, irrelevant and immaterial.

Examiner Norwood: Objection sustained. Now, you can ask this witness questions that will bring out any facts; any facts that are stated in this letter you may

1956 bring out by this witness, that is, if they are relevant facts, but not matters of opinion.

Mr. Wooden: I asked him if he wrote the language that I read to Dr. Tryon on a certain date.

1957 By Mr. Wooden:

Q. Is the language I read you, Major Eckel, in exhibit for identification 341-A and B?

Mr. Leisure: Now, I object to that. That is a method of getting into the record evidence which is not properly admitted over your Honor's ruling. If it is proper to be

gotten in evidence by this method it should be offered in documentary form.

Examiner Norwood: Objection sustained. Off the record.

(Discussion off the record.)

The witness identified Com. Ex. 343-A and B as a photostatic copy of a report to his immediate chief, with recommendations about the T. V. A. cement plant at Sheffield, dated June 19, 1934, and bearing the witness' signature. That was report was made by him in the
1958 regular course of his duties as geologist for T. V. A. He was in charge of that work at Sheffield.

(COM. EX. 343-A and B was offered and received in evidence.)

Q. Exhibit 343-B, speaking of the Sheffield plant, I understand this relates to—

A. (Interposing) Yes, sir, the proposed Sheffield plant, which we never built.

Mr. Wooden: Exhibit 343-B states:

"I do recommend strongly that some definite plans be made looking towards the possible manufacture of cement at that point. We will use close to 10,000,000 bar-
1959 rels of cement ourselves before our program is finished, and a government mill located at Sheffield could supply cheaeply all government needs down the Ohio and Mississippi probably at 50 cents a barrel saving over commercial purchasers. Under these circumstances it seems to me it would be entirely justifiable to ask that it be considered, in part at least, a Public Works project. This idea is submitted entirely for your consideration."

1960 ARTHUR E. MORGAN, called as a witness on behalf of the Commission, being first duly sworn,
1961 testified as follows:

Direct Examination by Mr. Wooden.

I am the chairman of the Tennessee Valley Authority and have held that position since about the middle of June, 1933, which was the time the appointment of directors was confirmed and the board was organized. I am an engineer by profession.

At the present time the members of the Tennessee Valley Authority shall concern themselves only with policy and the administration of the Authority shall be under a general manager. In about the 1st of
1962 August, 1933, two members of the board worked out a division of authority and power that were adopted. It provided that Dr. H. A. Morgan should be responsible for fertilizer and agriculture, Mr. Lillianthal should be responsible for power, for a land acquisition, and certain other functions of a less important nature. I, as chairman, should be responsible chiefly for the function that had been assigned to me directly by the President. The President had issued an Executive Order that I should have charge of the building of the Norris Dam, and that was left in my charge, and as chairman of the board, I was in charge of the office and staff organization.

Q. In connection with the building of the necessary dams for T. V. A., did you then foresee that you would have occasion to use large quantities of cement?
1963 A. Yes.

Q. Can you estimate approximately the amount that it was then estimated you would need?

A. At what time are you speaking of?

Q. At the time you began.

A. At the time we began?

Q. Yes.

A. At the time we began there was only one dam which was definitely provided for, that was the Norris Dam. Some time later it became more probable that we should build a considerable number of dams, and while there was no assurance of further appropriations, yet, if the program contemplated in the Act should be completed it seemed to us it would require the use of about ten million barrels of cement during the course of about eight years.

Q. What proportion of those needs have already been purchased?

A. Estimating offhand, I would say approximately one-half. I may be somewhat in error there.

Q. What provision was made for the balance that is yet to be used? Is that covered by contract?

A. A large part of it is. Whether it all is or not I can not speak with assurance, but so far as I know about then million barrels is covered by contract. There are one or

two dams in our program concerning which I think
1964 the provision does not hold.

Q. What were the first steps that you took toward making arrangements for acquiring the necessary supplies of cement?

1968 Q. I think the pending quotation is, Dr. Morgan, what were the first steps that you took for providing for a supply of cement for the building of your dam?

A. The first steps taken by the TVA to acquire a supply of cement for building the TVA dams was to call for bids for cement in the usual manner.

Q. Did you purchase cement under the bids that you called for?

1969 A. Yes.

Q. What was you experience with regard to whether or not the bidders quoted prices that were identical at destination point?

A. We called for prices at the mill, and we received prices at the mill which differed from each other in the bids, but when the freight was added to the job, the mill price plus the freight made the price at the job identical, substantially, in the different bids.

By Mr. Wooden:

Q. How many mills figured in such bidding? Approximately.

1970 A. I do not recall. I would say perhaps a dozen. Perhaps more than that.

Q. Name as many of them as you can.

A. I recall that the furthest east one was in Baltimore, but I cannot recall the name. I have that data somewhere. (Examining papers). I have a list of the companies from which cement was purchased but not of those from which we received bids, but did not make allocations of purchase.

1971 Q. Can you say wether or not the Baltimore concern you referred to was the Standard Lime & Cement Company?

A. I do not recall. I simply recall that that seemed a long way off. I recall that one mill in Baltimore bid on the job and it seemed to me to be a long distance. I don't remember the name. I only have here the names of the mills from which cement was actually purchased.

Q. On those first bids?

A. Yes, sir.

Q. Will you give us the names of those and the dates on which the purchases were made?

A. I have not the dates on which purchases were made.

Q. Have you the date of the letting?

A. I have the contract numbers according to our T. V. A. contract numbers, the name of the contractor, the quantity in barrels, the price per barrel, the shipping point, and the job on which it was used. That is all the information I happen to have here.

Q. All right; will you give us that?

A. The Southern Cement Company, contract No. T. V. A. 44.

Q. Do you have the date of the letting there?

A. I do not. This is just a summary that I happen to have without the dates. I was not informed what questions I would be asked.

Q. Do you know whether it was 1933 or not?

1972 A. All of these contracts were terminated prior to November, 1934, the date of the now existing contracts.

Southern Cement Company, 2500, 5,000 barrels, price per barrel $2.25, shipping point Birmingham, Alabama, for the Norris Dam.

Cheney Lime & Cement Company, 2500 to 5,000 barrels, price $2.25, Birmingham, Alabama, for the Norris Dam.

Volunteer Portland Cement Company, 125,000 barrels, price $1.75, shipping point, Knoxville, Norris Dam project.

Signal Mountain Portland Cement Company, 45,000 barrels, price per barrel in dollars, 1.6184; Chattanooga shipping point, Norris Dam.

Pennsylvania Dixie Cement Corporation, 45,000 barrels, price per barrel in dollars, 1.5996, Richard City, Tennessee, and Kingsport, Tennessee were the shipping points, and the Norris Dam the destination.

Alpha Portland Cement Company, 35,000 barrels, $1.70; Phoenixville, Alabama, for the Wheeler Dam.

Cumberland Portland Cement Company, 30,000 barrels, price in dollars $1.55383, Carlin, Tennessee, destination Wheeler Dam.

Lehigh Portland Cement Company, 35,000 barrels, price in dollars $1.69249, Boyles, Alabama, North Birmingham, Alabama, shipping point; Wheeler Dam, destination.

1973 Q. I understand those were all mill prices?

A. It is not indicated here whether they were mill prices or not.

Q. You said I believe a while ago you got mill prices that were different but they all work out, when freight was added, at identical delivered prices?

A. It is my understanding the price at the job was substantially identical in all the bids.

Q. What was the lowest and what was the highest price among those that you read?

A. The lowest is of the Alpha Portland Cement Company, $1.70—no, I beg your pardon. The lowest is the Cumberland Portland Cement Company, the price in dollars, $1.55383, and the highest—there were two alike—the Southern Cement Company, the Cheney Lime & Cement Company, $2.25.

Mr. Zimmerman: Off the record.

(Discussion off the record.)

A. (Continuing) The low price mill, the Cumberland Portland Cement Company, shipping from Cowan, Tennessee, and shipping to the Wheeler Dam, the two high priced mills, $2.25, the shipping point Birmingham, Alabama, for the Norris Dam.

By Mr. Wooden:

Q. As I understand, then, Dr. Morgan, there was a difference between the high and low of some 75 cents a barrel?

1974 A. Yes. I might say that this synopsis was furnished to me, and I just read this over late last night and I could be helped by Mr. Garrity, if he would explain it. Mr. Garrity has the actual bid prices.

Q. We can get the dates that cover the bids then from Mr. Garrity.

A. There is no date on this. Mr. Garrity has this information all in order. He does all the TVA purchasing. He has the date, the contract and bid prices, and so forth. He can give you the information exactly.

Mr. Wooden: Could you give to Dr. Morgan the record, Mr. Garrity?

(The document was handed to the witness, and Mr. Garrity and the witness conferred.)

The Witness: If I could restate that answer and leave out what I said it would be better.

Mr. Wooden: Just go ahead.
Examiner Norwood: Just go ahead and correct it.

By Mr. Wooden:

Q. You may restate it.
A. You asked concerning the Baltimore mill?
Q. Yes.
A. That was the Washington Building Lime Company of Baltimore. That particular firm did not quote a mill price, they quoted a delivered price of $2.19 at the
1975 Norris Dam, and nothing for the Wheeler Dam. Then there was a Detroit company, the Wabash Portland Cement Company of Detroit. They quoted only a delivered price. For the Norris Dam the price in dollars was $2.0696.
1976 The Witness: I should have added to my testimony the fact that these different prices were at different locations.
Q. Did you about that time, or at the same time when you were handling the matter of providing the supply
1977 of cement, consider the advisability of the Tennessee Valley Authority constructing its own mill?
A. Yes.
Q. What prompted you to consider that question?
A. We received bids that were substantially identical. I personally was not closely familiar with the cement industry and I did not know whether those were reasonable prices or not, but I had no way of telling whether they were reasonable when we received identical bids, and it seemed to me for us to enter into a large construction program calling for several million barrels of cement to be buying cement on identical prices, with no knowledge, with no accurate knowledge of what cement ought to cost, was not in the public interest and that therefore it was my duty to try to find out how much we ought to be paying for cement, and the only way to find that out was to make studies as to what it would cost us to make our own cement.
Q. In the same connection, did you discuss these bids and the identical character of them with representatives of the industry?
A. Yes.
Q. With what representatives of the industry did you have such discussion?
A. My first discussion was with Mr. John Treanor of

Los Angeles, California. I had known Mr. Treanor for a number of years and I met him here in Washington 1978 by accident in a hotel. We sat down and had breakfast together and I told him of my difficulty in the situation, that we are receiving identical bids and it gave me no basis of judgment to tell whether our prices were reasonable.

Q. Can you fix the time when you met Mr. Treanor?

A. I cannot fix it—let me see, I met him I think twice, and I cannot tell exactly which was the first meeting.

Q. What was Mr. Treanor's connection with the industry?

A. Mr. Treanor was, I think, president of the Riverside Portland Cement Company of Riverside, California, and he was active in an effort, I think, to bring about certain adjustments, a certain understanding between the government and the industry.

Q. Mr. Tearnor's concern was one of the bidders on T. V. A. requirements?

A. No, he was entirely outside of the bidding territory.

Q. Did he open up the negotiations with you or you with him?

A. Well, we talked the matter over together, and then he said in substance to me, "Why don't you talk it over with some of the men in the industry?" I said, "I do not know any of them." He said, "If I should arrange a meeting with you and some of the men in the industry would you be willing to talk with them?" I said, "Yes," in substance.

Q. Was such a meeting arranged?

A. Yes. Now I have a memorandum that I gave to the T. V. A. board concerning the meeting, which states 1979 that on Tuesday, February 22—

Q. I am showing you papers marked for identification as Commission's Exhibit 344-A to E, inclusive. Is that the memorandum that you just started to read? (Handing document to the witness.)

A. This is a photostat copy of the memorandum in question.

Q. Was that a report that you made to the board at that time?

A. Yes.

Q. It seems almost superfluous to ask you whether it was made in the ordinary course of your business as chair-

man of the T. V. A., and to the other members of the board.

A. Yes it was.

1980 Q. Would you say that the memorandum contains an accurate statement of the happenings that are described in it?

A. I believe it does.

Q. Would you say that it contains a more detailed and accurate statement than you could now make after the passage of nearly four years' time?

A. I should say that in most respects it does. I might recall certain details that are not there, but substantially it is a better report than I would make today.

Mr. Wooden: I offer those papers for the record.

Mr. Leisure: No objection.

(COM. EX. 344 was offered and received in evidence.)

Mr. Wooden: Your Honor, I would like to read a portion of this.

Mr. Zimmerman: It won't cost any more to have the whole thing read.

"To: Board of Director, Tennessee Valley Authority

"From: Arthur E. Morgan, Chairman

"Date: February 28, 1934

"Subject: Manufacture of Cement

"On Tuesday, February 27, Mr. John Treanor, President of the Riverside Portland Cement Company of California, called to see me on appointment previously

1981 made. We have been friends for several years. During our conversaton, I brought up the problem of the purchase of cement for the Tennessee Valley Authority, and indicated that some elements of the situation had impressed me unfavorably. Mr. Treanor suggested that it would be well if I could meet with some of the men in the industry, and offered to try to arrange such a meeting."

1982 By Mr. Wooden:

Q. May I stop there long enough to ask you, Dr. Morgan, what you meant by "some elements of the situation that impressed you unfavorably"? What were those elements?

A. I mean this, that we were receiving identical bids, which left me with no basis for judgment os to whether we were paying a reasonable price or not. In ordinary competitive bidding, where one receives different prices

from different people, there is at least an assumption that those different prices represent the differing abilities of the bidders to make prices. In those cases where prices were identical, that basis of judgment as to whether or not we were getting good prices was missing.

Mr. Wooden: Continuing: "Later, an engagement was made to have lunch today with Mr. Treanor as host, and with Mr. Conn, President of the Cement Institute, Mr. Porter, a director of the Institute, and Mr. Smith, President of the Penn-Dixie Portland Cement Company. Mr. Treanor is also a director of the Institute.

"We discussed the Tennessee Valley Authority and its building program, and then discussed our need for cement. Mr. Conn and the others present undertook to explain to me the general nature of the organization of the industry.

The personal impression I received from listening to 1983 them is that, in their opinion uncontrolled price competition in a staple industry will tend to destroy that industry, that some kind of control is necessary for stabilization, and that the cement industry has sought to bring about such control; that the problem is a difficult one and has not been completely worked out, especially in its relation to the public. There might be superficial appearance of collusion and conspiracy against the public, when in fact there was only an honest effort to stabilize the industry for the benefit of everyone concerned. Mr. Conn said it was difficult to see how the public suspicion in this case could be allayed.

"In the course of our talk we had discussed the relations of the Tennessee Valley Authority to the cement industry. I had stated that if the long-time program of the Tennessee Valley Authority progresses without interruption, we may have a steady, fairly uniform demand for cement during ten years, to the extent of perhaps ten million barrels; that much of this demand will be on the Tennessee River; that a cement plant built on the river could deliver cement in bulk onto barges on which it could be transported to the place of use and unloaded from the barges directly into the mixing plants, with a minimum of

freight and handling charges. The amount to be used 1984 is great enough to justify the building of a cement

plant rather than the payment of unjustified prices. There is excellent material on the river bank for making cement. Therefore, it seems that we have almost every

factor in the situation favorable for its economical manufacture and transportation.

"On the other hand, the Tennessee Valley Authority has many interests and responsibilities,—"

By Mr. Wooden:

Q. Do I understand, Dr. Morgan, that the paragraph I am starting to read is in substance what you told the gentlemen of the industry that you were talking to, or is this something now that you are reporting only to the Authority?

A. As I recall, this is my effort to tell our directors what I had said and what others had said at this meeting. It was the report of the meeting, as I understand it. I would say this part of it is. Later on there are recommendations to the Board.

Q. The paragraph I started to read is also your description of what happened at the meeting?

A. Yes.

Mr. Wooden: Continuing:

"On the other hand, the Tennessee Valley Authority has many interests and responsibilities, and every new responsibility tends to further divide attention and 1985 to put a greater burden upon the governing board.

The cement industry, by having a relatively single object, should be able to concentrate on the production of cement and to perform a public service which would justify a reasonable profit to the industry. So far as my own point of view is concerned, the administration of the Tennessee Valley Authority would prefer to be engaged with its own specific duties, and to profit by the judgment and experience of the cement industry. However, so much is at stake that rather than pay exorbitant prices for cement it could afford to pay well for the administration of its own plant.

"Inasmuch as a call for bids results in receiving identical bids for cement, from our point of view as consumers there is no competition. If an industry is to exercise this kind of control over production and prices, it is no longer a private industry, but becomes in effect a public utility, and its prices should be subject to disinterested judgment as to their adequacy and propriety. I stated that the Tennessee Valley Authority would prefer not to manufacture cement if such manufacture can be carried on by private

industry with a sense of trusteeship for the public, as a
properly operated public utility ought to be con-
1986 ducted.

"Mr. Conn presented an abstract of a statement by a well-known firm of public accountants setting out the earnings and losses of the cement industry during recent years, which indicated a very low earning rate over a period of about six years. I remarked that in cases where opposing litigants appear in court, diverse statistical statements often are presented, and that while each may be technically accurate, its significance can not be judged solely upon its face, and that as a trustee of public interests, for such a statement to be conclusive with me, I should need to be convinced that the premises underlying its development are representative and adequate.

"I made the following suggestion: If the Tennessee Valley Authority can be assured that the price it is paying for cement is, under all the circumstances, a reasonable and fair price, and unless there are some exceptional circumstances, such as peculiar location of construction projects, which would particularly justify the Tennessee Valley Authority going into cement manufacture itself, it would prefer to buy cement rather than to make its own. In order to discover whether the price at which cement is
offered is reasonable, it would be necessary to have
1987 certain disinterested inquiries made. I suggested that
a representative of the Tennessee Valley Authority and a representative of the cement industry get together to formulate principles and methods for making such an inquiry. Such principles and methods should cover determination of the cost of operation, of the necessary capital investment, of proper charges for management, for entrepreneur service, for risk due to fluctuation of demand and other causes, for depreciation and maintenance of plants, for taxes, insurance, legal assessments, and other proper charges.

"After discussion, it was suggested that capitalization might be considered as the reasonable average cost of reproduction through a business cycle, such as the past ten years."

1988 By Mr. Wooden:

Q. Can you say, Dr. Morgan, who made that suggestion?

A. I believe I made it. That is, I think, as I recall, this is the situation. I think some of the other persons made the suggestion that capitalization might be considered the reasonable average cost of reproduction, and then the question as to what time should be covered or what time should be taken. The cost of reproduction in 1933 or 1934 at the pit of a depression might not be reasonable, neither would the cost of reproduction in 1929, and I suggested if we could take a reasonable business cycle where we had the highest and the lowest, and average it, and take the average of those, that the average reproduction cost of that cycle would be a reasonable figure.

Q. Yes, but were you willing to accept the existing capitalization as representative of the cost of reproduction?

A. There is no such suggestion in this remark.

Q. Well, it reads: "After discussion, it was suggested that capitalization might be considered as the reasonable average cost of reproduction."

A. Yes. There is no suggestion there of taking capitalization as it is, is there?

Q. Well, it is a matter of interpretation, but I am frank to say that it looks to me as though it was suggested that the capitalization might be considered as the equiva-
1989 lent of the reasonable average cost of reproduction.

A. The cost of reproduction would be the cost of building a plant, wouldn't it?

Q. Yes.

A. There is no suggestion of taking capitalization as it appeared on their books.

Q. I don't know what kind of capitalization it would be otherwise.

The Witness: I can easily state what was in my mind there, because it followed along our study of what it would cost us to build a plant. We were carrying that study along at the same time, and the cost of reproduction would be what it would cost us to build a plant.

By Mr. Wooden:

Q. I can see that, but what did that have to do with the capitalization?

Mr. Wooden: I was just going on the language of
1990 the statement that I read.

The Witness: The language is this: "It was suggested that capitalization might be considered as the rea-

sonable average cost of reproduction through a business cycle, such as the past ten years." There is a definition of what capitalization would be. It would be the average cost of reproduction.

By Mr. Wooden:

Q. That is what I interpreted it as. That that might be treated as though they were equivalents.

A. Whatever the reasonable cost mentioned is, that we would say is the reasonable capitalization.

Q. It might be a reasonable capitalization, but the actual capitalization might be another matter.

A. This is defining what we would call capitalization.

Q. All right. I guess we will go ahead.

"Perhaps the most difficult elements to determine would be compensation for the risk and contributions of the business entrepreneur, and the extent to which the industry should share in the capital reduction and depression losses which the entire nation has recently experienced.

"The representative of the Tennessee Valley Authority should also report to the Authority on the general import and fairness of the system of territorial districting and price control of the cement industry, independently 1991 of the particular price level."

By Mr. Wooden:

Q. What did you have in mind there in referring to the system of territorial districting?

A. I had in mind the basing point system.

Q. Did you consider that that operated to divide the territory into districts?

A. I was not very greatly informed as to the cement industry at the time, and this was a process of becoming informed.

Q. What price control did you have reference to?

A. Where is the word "price control?"

Q. On the same line as "territorial districting."

A. I had in mind that we were getting identical bids, which seemed to indicate price control.

Mr. Wooden: (Continuing.) "When the principles and methods are formulated, and are approved by the cement industry and by the Tennessee Valley Authority, the two parties should then agree upon auditors and if necessary other specialists to make the appraisal and inquiry, the

two representatives above mentioned to direct the inquiry according to the principles previously agreed upon. This inquiry would consist of determining the cost of cement at each of the cement plants within the basic area of the Tennessee Valley Authority, and the application of
1992 these costs to the determination of a fair price for cement to the Authority.

"If the Tennessee Valley Authority should receive bids for cement which are reasonable in view of this appraisal and inquiry, then my own conviction is that the Tennessee Valley Authority should purchase its cement rather than manufacture it, unless there should be some special circumstances, such as special locations in which it would be desirable for the Authority to produce its own cement. It is my personal opinion that even in these special situations the first step to be taken should be an effort to cooperate with the cement industry in having cement manufactured by the industry and not by the Tennessee Valley Authority.

"If bids received should not be reasonable in the terms of these findings, then the Tennessee Valley Authority would take such action as it should see fit toward the production of its own cement. It would agree not to make public the statistical results of this inquiry without the permission of the cement manufacturers directly involved.

"After some discussion of details all the men present expressed their hearty approval of the procedure outlined. Mr. Smith of the Penn-Dixie Company, the only Tennessee Valley company represented, said that he would present the proposal to the companies in the Tennessee Val-
1993 ley territory, and I said that I would present it to the Board of directors of the Tennessee Valley Authority."

By Mr. Wooden:

Q. When you referred to Mr. Smith's company being the only Tennessee Valley company represented, what did you mean?

A. The only company with mills within close range of our work.

Q. Do you mean that you were dealing with some of these other gentlemen who were not even concerned as possible bidders on T. V. A. requirements?

A. Mr. Treanor suggested that I meet some men in the

industry. This was my first meeting with them, and he selected whom I should meet, and this was a preliminary discussion, and I did not know who would be there. I was unacquainted in the industry; I did not know whether these men would be interested or not until I met them.

Q. Did Mr. Conn who attended as president of the Institute, represent any company which at any time submitted bids to T. V. A.?

Mr. Leisure: Now, I object to the question as being phrased "who attended as president of the Institute." There has been no such testimony as that.

Mr. Wooden: The exhibit that I read says, "Mr. Conn, president of the Cement Institute" was present.

1994 Mr. Leisure: He was, but there is no evidence so far that he attended any meeting as president, as the question suggests.

Examiner Norwood: I think the witness can explain that to us. Did he attend as president?

The Witness: I did not ask him how he attended. Mr. Treanor said he would like a few men in the Institute to meet with me and talk it over. I made no suggestions as to whom he would invite. I did not know what companies they would represent, if any; I did not know whether they would be producers or attorneys or what their relationship would be. I simply met a number of men whom he invited to lunch and talked with those men.

Examiner Norwood: Now, answer the rest of the question.

The Witness: What was the rest of the question?

By Mr. Wooden:

Q. Whether Mr. Conn's company at any time submitted bids on T. V. A. requirements.

A. I don't know now, and I don't know that I ever did know whether Mr. Conn has a company. I don't know whether the head of the Institute is a producer or a full time man.

1995 Q. Can you say whether or not the Giant Cement Company ever submitted bids on TVA requirements?

A. The name is not familiar, but I could not say they never had.

Q. Why was it that you did not discuss the matter with the mills or companies that were in a position to supply the TVA?

A. We did. When I met Mr. Treanor it was, as I say, by accident. I saw him in the hotel in Washington. He asked me why I did not meet some of the men in the industry, and I told him I was not acquainted with them. It was not only that, but I did not have a personal basis to justify an approach, so far as I knew, and he suggested that we have this meeting, and it did lead to dealing only with the companies in our area, and this turned out to be an approach by which we could do that very thing.

Q. Resuming Reading: "I recommend to the Board of the Tennessee Valley Authority that in case a group of interested cement companies will take similar action, the Tennessee Valley Authority secure the services of a suitable person—such as a man with substantial industrial experience who has a knowledge of the theory and practice of cost determination—to cooperate with the person chosen by the cement companies, with the purpose of arriving at principles and methods to be used in the determination of costs and what would be proper prices. In case the cement companies and the Authority agree on such principles and methods, then these two men should direct and supervise the application of these principles and methods to the determination of cost and of fair and proper price."

Did you give consideration that connection, Dr. Morgan, to the question that what might be a fair price for one mill might not be fair for another?

A. I think there were many such matters that we had to take into account.

Q. Was the suggestion in your last paragraph adopted?

A. Yes.

Q. Who was the man employed; that answered the description you gave?

A. This memorandum was made on February 28th. On March 3 the proposal was adopted by the Board, and the man who was appointed to represent the Tennessee Valley Authority in that study was Mr. Morris E. Leeds, President of the Leeds & Northrup Company, of Philadelphia.

Q. Did you supply a copy of the memorandum which I have just read to a member of the industry?

A. I believe that I supplied a copy to John Treanor.

Q. Did you also supply one to Mr. Blaine Smith?

A. I cannot recall.

Q. I am showing you papers marked for identification as Commission's Exhibit 345-A and B, and I will ask you if that represents correspondence you had with Mr. Smith, your letter to him and his reply (handing document to the witness)?

A. I think that is a correct copy of a letter I wrote to Blaine Smith. I had forgotten that I had written one.

Q. Does that enclose the copy of the memorandum that I just read?

A. The statement is, "Our Board is favorable to such steps as were outlined in the memorandum addressed to the Board, a copy of which was sent to you."

Q. I was not asking you to read it.

Examiner Norwood: He just wanted to identify it.

By Mr. Wooden:

Q. I wanted you to answer the question after you looked at it, whether that transmitted a copy of the memorandum to Mr. Smith that I read.

A. It states so in the letter. I have forgotten personally.

Mr. Wooden: I offer those two papers for the record.

Mr. Leisure: No objection.

Examiner Norwood: Admitted as marked.

1998 (COM. EX. 345-A and B was offered and received in evidence.)

1999 A. (Interposing) Mr. Wooden, before we go ahead may I explain one figure that I gave?

Q. Yes.

A. When I gave a price of $2.25 a barrel of cement from Birmingham to the Norris Dam, that was for a small amount, from 2500 to 5000 barrels, and it was for building the houses in Norristown, and it was slag cement, a different kind of cement. I should like to make that explanation.

Q. Not only a different kind of cement but on a different project, so to speak?

A. Well, it was a wholly different kind of cement, for a different kind of use.

Q. Was there only one bid on that kind of cement?

A. There were two bids, and they were the same.

Q. I see. Now this meeting that you have described in your memorandum of February 28, Exhibit 344, was

that held on the same day that the memorandum was written? Perhaps this letter of March 1, 1934 to Mr. Smith, Exhibit 345-A, wil enable you to answer that. (Handing document to the witness)

A. This letter indicates that it was written on the same day.

Q. How long before the meeting with the various 2000 representatives of the industry named in your memorandum was it that Mr. Treanor had suggested the meeting?

A. May I see the memorandum itself? I think I can tell from that. (Examining document) Tuesday, February 27, 1934, was the date when I met Mr. Treanor. Wednesday, February 28, was the date of the luncheon.

Q. Where was that held? I mean was it in Washington or some other city?

A. It was in Washington or New York, but I cannot recall. I think there is a reference to its location somewhere, but I have forgotten. I met Mr. Treanor in Washington, but it is not clear in my mind whether we met in Washington or New York.

Q. Did Mr. Treanor explain how he happened to be in Washington at that time?

A. I believe so. I had several talks with him at different times, and the subjects of the different talks, what he was doing at those specific times, is not clear in my mind. I know that at sometimes he was here on the Code, on the Cement Code matters.

Q. Even before this time that you met him?

A. I say I cannot designate the different times very clearly, because my memory is not sharp enough for that.

Q. Did you discuss with the industry representatives on that occasion any of the experiences of the industry in dealing with other government agencies purchasing cement?

A. My memory is not very clear. I believe that 2001 I discussed with him my own experience in earlier purchases of cement on local government projects, but not the Federal Government projects.

Q. I am speaking of other governmental agencies like the Reclamation Bureau, or War Engineers, anything of that sort.

A. My memory is not clear on that, but I know at various times Mr. Treanor brought up the subject of the pur-

chase of Boulder Dam cement by the Reclamation Service, and the studies of special types of cement, and I think in all probability we did discuss the purchase of Boulder Dam cement by the Reclamation Service, but my mind is not sharp or clear on that.

Q. Can you say whether or not there was any intimation by the industry representatives that their dealings with other governmental agencies had been unsatisfactory?

2002 The Witness: I do not recall such an expression. I do recall, either then or at some other time, a discussion with reference to the planning of cement for the Boulder Dam. Mr. Treanor said his relations with the Reclamation Service had been good there, he thought that was an excellently planned project, and his respect for government operation had been very much enhanced by observing the quality of their design and the thoroughness with which they approached the problem.

By Mr. Wooden:

Q. Did you have any discussion within your own organization as to whether or not you should have other governmental agencies participate with you in these negotiations with the industry?

A. I am inclined to think I did, but I cannot express a definite memory on that.

Q. Was there some arrangement by which the Interior Department and the War Department were to have any connection, or have some connection with the negotiations which you were undertaking with the industry?

A. Yes.

Q. What was the character of those arrangements?

A. The character of the arrangements was that Secretary Ickes of the Interior Department appointed, I think, Mr Slattery, if I am not mistaken, as the person 2003 whom we should keep acquainted with the progress of our negotiations, and I think that Secretary Dern of the War Department, appointed—what was the title? General?—appointed General Somerville to keep track of that, and from our point of view I requested Major Eckel to be responsible for keeping in touch with Secretary Ickes' representative, and with Secretary Dern's representative, and I appointed Mr. David, Paul David who was working on it with us, to keep in touch with the Federal Trade Commission and with the Code Authority. There-

after, I relied upon Major Eckel and Mr. David to keep up those contacts.

Q. Showing you papers marked for identification as Commission's Exhibits 346-A to D, inclusive, will you state what they are? (Handing documents to the witness)

A. 346-A is a telegram which I sent to Mr. Treanor,—A, B, and C are all one telegram. 346-D is a telegram which Mr. Treanor sent to me.

Q. Is it in reply to yours?

A. I wonder if it would be suitable to make the record clear to include the telegram from Mr. Treanor to me to which this one of May 13 is a reply?

2004 The Witness: There is a telegram from Mr. Treanor to me of May 12th that I would have included, to which mine is a reply.

By Mr. Wooden:

Q. I do not seem to have it.

A. It was in the material that was sent to you. I think it should be a part of the record.

Q. Yes, I would be glad to have it.

Q. May I read it, and then supply it?

Q. Yes. We have not completed the formal offer.

Mr. Wooden: I am now offering Exhibits 346-A to D inclusive, and propose to offer the other telegram which Dr. Morgan has but which I apparently have not.

Examiner Norwood: We will give that the letter "E" then, 346-E.

Mr. Leisure: Are you going to read them, Mr. Wooden? If so, I won't take the time to read them now.

Mr. Wooden: Yes.

Mr. Leisure: No objection.

Examiner Norwood: Received as marked. And it is understood that this telegram which is missing may be added here as Commission's Exhibit 346-E.

(COM. EX. 346-A to E inclusive was offered and received in evidence.)

2005 By Mr. Wooden:

Q. Is the one that you have in your file prior to the others?

A. Yes. It is the one to which the first one is a reply.

Q. I suggest it be read first then.

A. Shall I read that?

Q. Yes.

A. Only part of it is pertinent, but it is not very long. This is to Dr. Arthur E. Morgan, Chairman Tennessee Valley Authority, Knoxville, Tennessee, May 12, 1934: "Mr. Eckel and I have talked most of day STOP He is meeting some of our technical men at my house tonight STOP Tomorrow we visit mill STOP" This is the part that I wanted to read to indicate my relations— "My participation in this matter is going to be upon basis of relations of good faith which exist between us personally STOP Am setting up no barriers to what Eckel may request in the way of information and will recognize obligation to give him the whole case and not merely a part which may appear favorable to our industry STOP In other words I respect your purposes and methods which Mr. Eckel fully reflects and will correspond in kind to this great opportunity afforded our industry STOP There are some very important fundamental aspects which we have never discussed some of which I have developed in my own mind since these questions arose in their present form 2006 STOP Mr. Eckel and I both feel it very important to talk out these underlying principles before the more detailed aspects can be fairly dealt with STOP That is responsible for his telegram suggesting early meeting of conferees STOP Eckel not here now but will show him this telegram."

Mr. Zimmerman: I suggest, in order that it may be clear in the record and continuity be maintained, that we read this one of May 13th right following.

Mr. Wooden: That is what I was going to do.

This is a day letter to John M. Treanor from Arthur E. Morgan, May 13, 1934:

"Have read your telegram to our Board they appreciate your interest and cooperation and you can count on their not taking advantage of your confidence STOP My memorandum of our Washington Conference of which you have a copy has their approval."

The Witness: This is the memorandum of February 28th.

Mr. Wooden (Continuing): "Morris Leeds our representative to meet cement representatives is an experienced public spirited business man of exceptionally complete integrity STOP I understand that such questions as the extent to which excessive or obsolete plants should be writ-

ten off in determining costs are proper matters for
2007 consideration and that we are not committing ourselves to approve the existing financial or business set up of the industry STOP The President asked us to have some representative of the War Department and Interior Department made aware of the progress of our negotiations STOP Secretary Dern has appointed Major Brehon B. Somervells for us to report to and Secretary Ickes has approved my proposal that Mister Eckel report to his Department STOP He suggested reporting to Mister Slattery STOP The President asked that these Departments participate but I took exception and he then approved the arrangement stated STOP I report this so you may have the whole situation in view STOP I sincerely hope we may work out some policy and program that will be a contribution to industrial understanding STOP Leeds not available from May twenty to twenty five STOP He and I could meet you Washington May Twenty Eight or I could see you New York May Twenty One without Leeds Please wire plans."

Mr. Turner's reply, Exhibits 346-D, May 14th:

"Acknowledge telegram 13th of course there are no commitments respecting financial setups or anything else we are just after facts and fair formula STOP Suggest general meeting May 28th my conception of problem improved since talking Dr. Eckel believe can now do pre-
liminary work with mills concerned and acquire
2008 useful information about their several situations to advantage before general conference however would like good talk with you first if possible STOP Can leave here May 17th in order meet you Twenty First if convenient my New York address Waldorf—John Treanor."

By Mr. Wooden:

Q. Were you aware, Dr. Morgan, that at about the time of these telegrams passing between you and Mr. Treanor that the President had requested NRA to ask the industry if it would not make an f.o.b. mill price basis for Government purchases?

Mr. Leisure: I object to that question. If that is material or relevant in this case, it should be put in in another way and not in the form of a question.

Examiner Norwood: It is already in evidence. He is just asking him if he knows it. Objection overruled.

The Witness: I did not know it, so far as I can recall.

I knew that the President was interested in the subject, but so far as I can recall I did not know that he was making any proposal to the industry.

By Mr. Wooden:

Q. It follows, of course, that you were not aware that the industry had expressed an unwillingness to comply with that request?

Mr. Leisure: I object to that also.

The Witness: May I correct my statement?

2009 Examiner Norwood: Certainly.

The Witness: As I think about it, I think that John Treanor told me that the President had made certain proposals and that he hoped to have somebody see the President to explain the situation to him. I think that John Treanor gave me that information. I was thinking first of my talks—I talked this over with the President at times, and I was quite sure that he had not, but as I recall now, John Treanor told me that there was such a question up.

By Mr. Wooden:

Q. By "such a question," you mean whether the industry would make f.o.b. mill prices on Government purchases?

A. I do not recall the exact substance of the issue, but I know that Mr. Treanor felt that there was a somewhat critical issue up there.

Q. Were you aware that Mr. Treanor was of a different mind on that particular question than the rest of the industry or some other portions of the industry?

A. My impression is that the industry—from talking with Mr. Treanor—the impression I got from him was that the industry was not a unit in the matter, that they felt that the problem had not been fully threshed out within the industry, and there were differences of opinion within the industry. That is my impression.

2010 Q. Did it give you any information at the time as to the sort of a reply that the Chairman of the Code Authority had made to Mr. Murray, the Deputy Administrator, with reference to the President's request?

A. I do not recall. He may have done so, but it does not come to my memory at the moment.

Mr. Wooden: Before leaving that particular point, Your Honor, I would just like to make a reference to Exhibits 6-A and B, consisting of the exchange of tele-

grams between Barton Murray, Deputy Administrator, NRA, and D. H. Rader, Chairman of the Code Authority, which is the basis for my recent questions.

The Witness: I am quite sure that I never knew of that exchange of telegrams.

By Mr. Wooden:

Q. Did you learn about that time through Mr. Treanor or anyone else that Mr. Treanor had written a letter to Mr. Rader, Chairman of the Code Authority, disagreeing with the refusal of the Code Authority to make the f.o.b. mill price?

Mr. Leisure: Now, if Your Honor pleases, I object to that also. Whether this witness knew that at the time or not is not material to any of these issues, and I object to the question.

Examiner Norwood: I do not know just what he is leading up to. I see no harm in his saying
2011 whether he had the information or not.

Mr. Wooden: It is a question of the sequence of events at that particular period.

Examiner Norwood: If it is going to explain some subsequent action that you are going to bring out, objection overruled.

The Witness: At some time Mr. Treanor made me aware of his having written such a letter, but whether it was at that time or later, I do not know.

By Mr. Wooden:

Q. I am calling your attention to Exhibit 7-A and B. Is that the letter that you have reference to?

2012 A. Yes. My impression is that Mr. Treanor did not tell me about that letter until after our own negotiations were completed. That is my impression now, that I did not know about that letter until a good while after it was written.

Q. You mean after your contracts were entered into?

A. That is my impression.

Q. Did Mr. Treanor at some time provide you with a copy of the letter itself?

A. Yes.

Q. If you had had that letter before your contracts were entered into, would it have made any difference as to the continuance of your negotiations with Mr. Treanor?

A. Why, that is a hypothetical question that I do not think I can answer.

Q. I refer particularly to Mr. Treanor's statement in the letter that the arguments for the basing point system were sheer bunk and hypocrisy.

Mr. Leisure: Now, I object. That has been used so many times that it is now threadbare, I think, with all of us. It was used in two reports of the Commission, and counsel liked it so well that he included it in the complaint, and he opened this case with it. Now we have it again. Must we continue having that on all occasions? A letter written by a man who is now deceased, whom we cannot call in our defense. Must this continue over and over again? I object to the use of the letter in that way.

2013

Examiner Norwood: He simply asked him about something that is already in the evidence. As long as it is in the evidence and in the pleadings he has a right to ask this witness what his reaction was to it, I suppose.

The Witness: I think that my action would have been, so far as anything Treanor would have said and done, would have been based upon my general knowledge of his attitude and points of view, rather than a single letter that he wrote, although I think the question is hypothetical, because I cannot reconstruct it.

Mr. Wooden: I would like to correct Mr. Leisure's statement that the Commission published the letter in question in any report.

Mr. Leisure: Will you look at your annual report for 1935, Mr. Wooden?

Mr. Wooden: There might have been a reference to it, possibly.

Mr. Leisure: Well, that same phrase has been used over and over again.

The Witness: I would like to add there that the T. V. A. was not dictating the conditions under which the Cement Industry was to be operated. The entire United States Government was receiving bids for cement and was paying a certain price level for that cement. I felt that we might save some money by an inquiry. We made an inquiry on our own business. If the contracts are fulfilled it will mean a saving of about $2,000,000. That inquiry resulted in the reducing of the price of cement on other work around there.

2014

We were then working under the N. R. A. code, which seemed to justify uniform bids. In fact, we were getting them from many industries under the code, and it was not the business of the T. V. A., as we saw it, to reconstruct American industry, which seemed to be the business of the N. R. A. but we did try to protect our own job against improper prices.

By Mr. Wooden:

Q. You were still going through the motions of getting competitive bids, were you not?

A. Yes. I do not say that we were going through the motions, we were asking for bids. We made no commitments of any kind which would in any way prevent or discourage competitive bidding.

Q. In fact, were you not under the same obligation as other government purchasing departments, to seek to get competitive bids?

A. Yes, but that method had not been fully effec-
2015 tive, and we used a method that was more effective in getting a price reduction. We did not give up that method. We called for bids as ever, and when we finally reached the conclusion it was not that we would pay a certain price for cement, the conclusion we reached was that if the maximum price received in our bids did not exceed a certain amount, we would consider it inadvisable to build our own plant.

Q. We are getting a little ahead of the story. We will come to that later.

2016 A. You brought the matter up in your question. If prices would exceed that amount we would build our own plant. So we were simply setting a ceiling of prices.

Q. Is it an accurate statement of the situation, Dr. Morgan, that you adopted that method because you thought the competitive bidding method had broken down?

2017 The Witness: I think I will have to answer that at just a little length.

2018 A. When I objected to the basic price system in my discussion with cement men it was expressed to me in a way to show that active competition continued to exist, and I might—

By Mr. Wooden:

Q. Would you then—

Mr. Zimmerman: (Interrupting) Let him answer, please, Mr. Wooden. I object to the interruption.

A. (Continuing) I do not know that I need here to go through the explanation given to me as to how competition existed, but that explanation was not satisfactory to me. I did not make up my mind that competition had broken down, but I did make up my mind that I did not know whether it had broken down or not.

By Mr. Wooden.

Q. You were adopting the other method without knowing whether it had broken down or not?

Mr. Zimmerman: Excuse me. I think the doctor ought to be permitted to finish his answer without further interruption.

Examiner Norwood: Finish your answer.

A. (Continuing) I think I had better indicate what was presented to me as the working of the basing
2019 point system. I cannot say who presented to me, but I had it in my mind. This was the sort of a machinery, as I recall now after three years, that was presented to me: It was that when bids were called for on cement that a certain number of days before bids were actually sent to the buyer from the cement companies that each cement company would send to the Cement Institute the bid it was going to make, and then the Cement Institute would distribute those bids to all customers, so that each customer knew what every other bid was going to be.

By Mr. Wooden:

Q. When you say "customer" you mean "bidder"?

A. I mean bidder. Each bidder knew what the other's bid was going to be, and then he had the choice of bidding no higher than that or of losing the job. I am giving you the explanation that was given to me. So that in each bidding, each cement company knew what the low bid was going to be on that job, and he had a choice of bidding it or not bidding. That was the explanation given to me. That may be right or it may be wrong.

2020 Mr. Leisure: Can we have the time of the Doctor's suggestion fixed, as to whether it was under N. R. A. or not? We have no time fixed for his discussion.

Examiner Norwood: Can you fix the time?

The Witness: I think it was under the N. R. A. organization.

By Mr. Wooden:

Q. In other words, during 1934 is when these negotiations were going on?

A. I believe so. Now that being the case, there was a plausible explanation of how competition could exist. As to whether that was the real explanation or only a plausible explanation, I do not know, but I was not satisfied that competition was adequate, and I felt that with the large sales we were going to make we were justified, as I said in this memorandum (indicating),—if we did not have the ordinary evidences of competition, such as difference in prices, then we were justified in trying to get first-hand knowledge of what cement ought to cost us.

2022 Q. Were you aware, Dr. Morgan, that along in June, 1934, of an Executive Order permitting a 15 per cent cut below the prices that were filed?

A. On Government business?

Q. Yes.

A. I have a general knowledge that something of the sort took place, but I could not define it from memory.

Q. Did you get any 15 per cent cuts on cement when that order was filed?

Mr. Leisure: I think, your Honor, before that question is asked, that there should be some basis laid as to whether or not he advertised for bids. Naturally he would not get 15 per cent cuts or anything else if he did not advertise.

Examiner Norwood: He might elucidate and say what the previous bids were.

Mr. Wooden: I am asking for his general recollection about the possible relation between that order which was dated June 29, 1934, and his recollection of what the

2023 industry did in the way of bids thereafter.

The Witness: I do not know when such an order was issued, I do not know whether we bought cement before or afterwards. The Purchasing Agent of the Tennessee Valley Authority is here. If the date of that order can be given, he can give you the list of cement purchased and the prices.

Mr. Wooden: All right. We will pass it.

2024 The witness identified Com. Ex. 347-A to I, as a letter dated May 24, 1934 from John Treanor addressed to him, containing some marginal notes which he had made on the letter in his own handwriting and bearing

Mr. Treanor's signature. He identified Com. Ex. 347-J as a letter dated May 24, 1934 from Morris E. Leeds to Miss Ruth Magee, the witness' secretary, upon which there were also some notes in his handwriting.

By Mr. Wooden:

Q. Let me ask first, does the long letter of Mr. Treanor's running from A to I, inclusive, does that bear Mr. Treanor's signature?

A. Yes, sir. I might say there is a reply to that letter from me.

Q. Yes, we will get to that.

2026

Washington, D. C.,
Friday, January 14, 1938.

2027 ARTHUR E. MORGAN, a witness called on behalf of the Commission, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (Continued)

Mr. Wooden: I think, your Honor, the first thing on the morning's business is the matter of the pending of an exhibit.

Examiner Norwood: Exhibit 347-A to J.

Mr. Leisure: Yes, your Honor. We object to that exhibit as being incompetent and irrelevant. There are many statements in there which could not be taken as written in the regular course of business. It is in the form of a personal letter, and we usually feel that the other respondents should not be bound by correspondence of that kind.

The letter shows upon its face that it is not written
2028 in any official capacity as representing anyone, it is a personal letter and it is in the nature of a discourse on a subject. It is as if an important official of one company should write a textbook and then you should endeavor to offer that textbook against the other respondents in a case of this kind. It is a discourse over 9 pages long in which a man expresses his personal views about any one subject, or several subjects; and under such circumstances we do not feel that we should be bound by writings

of that character, under the issues drawn in the complaint.

2030 Examiner Norwood: I think it contains much relevant information and contains some considerable matter that is relevant and it will be received.

2031 Mr. Leisure: Will your Honor limit the letter to those matters in the letter which appear to be stated on authority from other respondents, or which appear to be written in the regular course of business, rather than the expression of personal views? Limit it to those paragraphs.

Examiner Norwood: I will admit it as its relevancy may appear and its application may be found to be just.

Mr. Wooden: There is no way of telling from the face of the document, of course, what matters come within the scope of the statement of Mr. Leisure.

Mr. Leisure: I want to make this statement for the record, that there is nothing in the record which shows that he was authorized either to write it on behalf of the Institute or on behalf of any of these respondents.

Examiner Norwood: Of course, if it applies to these other respondents, other than the writer's own company, the connection must be made, as heretofore stated.

(COM. EX. 347-A to J was offered and received in evidence.)

Q. Dr. Morgan, before we got further with the exhibit that we have just been discussing and referring to, Commission's Exhibit 344, the record shows that you sent a copy of that at the time to Mr. Blaine Smith and to

2032 Mr. Treanor, I believe. I believe you so testified. Is that correct?

A. I testified that I remembered sending it to Mr. Treanor, and a letter is here from Blaine Smith saying I sent it to him.

Q. Did you ever get from them any communication or statement disagreeing with the statement that you had made in your memorandum?

A. Not that I recall at the moment. If there were any such it would appear in our correspondence. I do not have a memory of it.

Q. Now I note in this Commission's Exhibit 344-A, in the first sentence, that you stated that Mr. Treanor "on Tuesday, February 27th, Mr. John Treanor, president of the Riverside Portland Cement Company of California,

called to see me on appointment previously made." I understand you to say that you had met Mr. Treanor by inference. Will you straighten us out on that, with reference to that statement in your memorandum?

A. I met Mr. Treanor in the Coffee Room of the New Willard Hotel, and as I testified, I was not certain as to the exact time, because I met him more than once. I would judge that the appointment mentioned here was made when I met him at the New Willard Hotel. As I testified yesterday, I cannot recall the exact occurrence of those different meetings.

Q. Well, do I understand that you are now not
2033 certain whether it was by appointment or by accident that you had the meeting with Mr. Treanor on the day of February 27th?

A. No, I say that I met him more than once, and I met him first by accident. I ran on to him, as I say, in the Coffee Room in the New Willard Hotel. Then we talked things over and we continued the contact.

Q. The same day?

A. Well, I cannot recall.

Q. I see. You do not know whether it was on February 27 that you met him in the Coffee Room or not?

A. Well, it might have been several days before. I can not recall now.

2036 Q. Mr. Treanor refers to a report of the Federal Trade Commission and comments: "The fixed cap-
2037 ital in the industry is large. The ratio of fixed charges to direct costs of production is very high; and in general, the more efficient the mill, the higher is the fixed charge. The ratio is probably never less than 1:1 and I know cases where it is 2:1. In fixed charges I include all items which are practically independent of volume, such as plant overhead, administrative overhead, sales cost, depreciation and whatever is required for the service of the Invested capital." Did you have a committee that went into those matters, Dr. Morgan?

A. Yes, sir.

Q. Who constituted that committee?

A. Morris Leeds, Dr. Fetter, of Princeton, and I think Major Eckel. The list is referred to in some of our exhibits, I think, but I can not recall that.

Q. Mr. Treanor's letter continues, referring to the cyclical peaks and off peaks of demand and excess ca-

pacity, and then says: "The result of this is that the cement producer nearly always finds himself selling in a buyers' market. Please remember the high percentage of fixed charges,—50 per cent or more of total cement cost. Given unrestrained competition, this is the formula for pure disaster." Did you make any study or did your committee make any study as to whether that high percentage of fixed charges of 50 per cent or more of the total cement cost, how that compares with other in-
2038 dustries or other commodities?

A. Some of the men on that committee were familiar with other industries and other commodities, but I do not recall their having made such comparisons in their report.

Q. The paragraph on page 3 under the head of "The basing point system in the cement business," Mr. Treanor says: "I have no intention of discussing the respective merits of the f. o. b. mill system and the basing point system of making prices—certainly not in a document which Mr. Fetter is to read." Did Dr. Fetter read this document?

2039 The Witness: I don't know.

By Mr. Wooden:

Q. Mr. Treanor goes on immediately: "I recognize the economic waste in the basing point system and personally I would like to see the f. o. b. mill system replace it in the cement business. But the practical question is, can such a change be made in the present state of the laws? It is certain that the entire cement industry will not voluntarily adopt the f. o. b. mill system, for a very substantial part of it, having made its plant investment with reference to the basing point system, now has a vital interest in keeping that system in force. In the absence of a national law forbidding sales at other than a uniform f. o. b. mill price, this section of the industry will certainly continue to use the basing point system in its selling." Did you ever discuss that particular point orally with Mr. Treanor?

A. Substantially so. I have discussed the basing
2040 point system with him, but whether that particular phase of it, I cannot recall.

Q. Mr. Treanor then proceeds to discuss the possibility that there might be a basing point system coexisting

with an f. o. b. mill system, and concludes that the two could not exist side by side, and that the basing point system would survive in such a struggle. If gives illustrations between Mill A and B, hypothetical illustrations, and says that the mill base mill would have no escape but in retaliation for the prices made by the basing point mill and says, "But retaliation results in an abandonment of the one price system for the basing point system." Did you ever discuss that with Mr. Treanor orally, the question whether the basing point system or a multiple price system as contrasted with the one price system of mill base?

2041 A. I do not recall any such comparison.

Examiner Norwood: How is it relevant whether he discussed it with him or not?

Mr. Wooden: I want to get further information if I can.

Examiner Norwood: All right; go ahead.

Mr. Leisure: It is not binding on any of these respondents whether this witness discussed it with him or not, which is the point of my original objection.

Examiner Norwood: Counsel is giving us a very short sketch of what is in the paper. I think that will be useful if you make it short.

By Mr. Wooden:

Q. Now, you have some marginal notations, which I believe you said were in your handwriting. They were made, I take it, at the time you received the letter?

A. I thought so. I do not seem to find them in this copy.

Q. Maybe the photostat did not carry through on the other copy. On page 4, Mr. Treanor states that it is a purely academic question of whether the basing point system or what he called the one price mill system was superior in merit, and then says, "As a practical matter, short of the compulsion of a national law, no change can be made from the present basing point system to the f. o. b. mill system, even though a large portion of the industry desired it. I have no reason of course
2042 for believing this to be the case." And then do I read your comment in the margin correctly, "Or government manufacture. The public pays for the basing point system." Is that correct?

A. Yes. A "short of compulsion of a national law," I put in "or government manufacturing."

Q. On page 2, Mr. Treanor made the statement in a quotation, I believe, that the cement companies of the United States had never been able to earn or pay large dividends. Opposite that in the margin is, in your handwriting, "20 per cent in 1923."

A. Yes.

Examiner Norwood: Is that a fact?

The Witness: I don't know. These were notations that I made on the margin of a letter when I received it and read it over. I made these notations in view of answering the letter. They are personal notes of my own.

By Mr. Wooden:

Q. Did you make some study to ascertain whether the statement that I read from the letter was accurate or not?

A. It is hard for me to remember now. This is one of the great many letters that I got three years ago, and I had various other things on hand. I presume that I did, and I have a general knowledge of having done so, but the occasion of writing those notations on there is
2043 not clear in my mind. I have a vague memory of having seen a statement of those returns to come to that industry in that year.

Q. On page 5, Mr. Treanor passes on to another point and says: "It is a commonplace that cement manufacture is a local industry." Did you write in the margin any comment on that? Here (indicating) "not so under basing point system. Cannot claim both basing point system and local industry, status."

A. Yes.

Q. At another place, Mr. Treanor refers to the over capacity in the industry and its expansion and says, "Our industry should not be spoken of harshly for an expansion, blind though it may have been, which so clearly served the public interest." Did you write in the margin any comment on that? Commenting, "Why pay income on 150,000,000"—I don't know whether that is "investment" or "their investment." I will let you read that. "The industry now asks pay for that income." And "Does that help the public?" Is that your comment?

A. (Reading.) "Why pay income on 150,000,000 dol-

lars of investment? The industry now asks pay for that increase. Does that help the public?"

Q. In other words, that was the increased investment attributable to over-expansion; is that the way you interpreted it?

2044 A. Well, I cannot recall now. That was the notation that I made when I read the letter.

Q. In the paragraph above he refers to $150,000,000, I believe, in that connection.

A. The statement occurs that: "Assume further that the cement industry had been endowed with foresight. It could in that case have saved itself the investment of about $150,000,000 in unnecessary plant, and at the same time it could have put from $400,000,000 to $800,000,000 additional profit in its cement pockets. That is, the demand for cement during the six years 1925 to 1930 inclusive, during which the hypothetical scarcity of cement would have existed, amounted to over one billion barrels and the actual decline in average price was nearly 40¢ per barrel."

On page 8, Mr. Treanor refers to a charge made by 63 companies for depreciation and obsolescence during ten years of a total of $136,000,000. Did you comment on that in the margin, "A bookkeeping device. No changes during a course of years?"

A. Yes.

Q. On the last page, Mr. Treanor referred to the large sales department and intensive selling campaigns characterizing the cement industry and then says: "The question is whether these charges, upon some fair pro rata basis, are proper charges for the government to as-

2045 sume in connection with government business, which admittedly calls for relatively small direct sales effort. I can sincerely hold that they should be recognized by the government upon a pro rata basis. Otherwise state and municipal governments would be entitled to like exemption, with the result that the total selling cost, instead of being distributed would be concentrated upon that portion of the business which goes to the general public." Did you write at that time in the margin the words, "Why not?"

2046 A. Yes. I might say that those notations were made and then I wrote a letter. I wrote a reply to Mr. Treanor in which various of those points were discussed.

Q. We will come to that a little later. I do not know whether it was in the nature of an exact reply to this, but you did write him about such matters a little bit later. One more extract and I am through. The next paragraph to the last, Mr. Treanor says: "I am conscious as I write this letter that I have made out a not unfavorable case for my industry—possibly a too favorable case. I will, however, make a confession to you. Until I set to work to think some of these matters out in a responsible way, I shared much of the public criticism of the industry, especially on the score of over-building, and in part on the charge of obsolescence. So I can truthfully say that my present comment does not reflect a preconceived notion about the industry, for I expected to have to acknowledge some very unpleasant things about matters which now appear to me to have been rather creditably handled."

On the last page of his letter Mr. Treanor refers to a meeting, Monday meeting of the committee, before which he intended to familiarize himself with the figures relating to the Tennessee area mills, I believe it is. (Handing document to the witness.) Do you know what that meeting was that he referred to there?

2047 A. I do not. Which paragraph is that?

Q. (Indicating on the document.)

A. I recall that at one meeting I asked Mr. Treanor, I believe, to meet with this committee that the T. V. A. had appointed, so that they might get an understanding of his point of view of the conditions that we were facing.

Q. That was the Leeds committee?

A. Yes.

2048 Q. Dock Fetter?

A. Yes. Mr. Treanor met with that committee once, as I recall. I know we were trying to arrange such a meeting. Whether it actually occurred I cannot recall.

Q. Is that the meeting that is referred to in Exhibit 347-J (handing document to the witness)?

A. I believe so.

Q. Mr. Leeds wrote in this exhibit to your secretary, "Please also let me know whether you expect to have representatives of the industry present at this meeting. I think it might be well for the T. V. A. representatives to have one more meeting to harmonize their views before meeting the industry."

Did you write on that, "Mr. Treanor will be there as an assistant to the T. V. A."?

A. Yes.

Q. By what process does Mr. Treanor become an assistant to T. V. A. any more than Mr. Blaine Smith, or any other industry representatives?

A. That word "assistant" is poorly used there. He was giving us a somewhat more objective and critical view of the industry, I felt, than we might get otherwise, and I thought, as an approach to the point of view of the industry, for our people to have a chance to meet him before they met the people that they were negotiating with might be helpful. They of course, met by themselves part of that time, as I recall, and then asked him to come in and discuss the matter with him for part of the time.

2049

2057 The witness identified Com. Exs. 350-A to G as correspondence from the files of the T.V.A., the "first" a letter to him, dated March 9, 1934, from Mr. Lillienthal; the "second" a telegram to him, dated March 9, 1934 from Mr. Lillienthal; the "third" a telegram to him, dated June 4, 1934, from Mr. Treanor; the "fourth" a letter from him, dated June 7, 1934 to Mr. Treanor; and the "fifth" a telegram to him, dated June 11, 1934, from Mr. John Treanor.

Mr. Wooden: I offer them for the record.

Mr. Leisure: We reserve our general objection as incompetent, immaterial and irrelevant and not binding upon the respondents.

Examiner Norwood: Received as marked.

(COM. EX. 350-A to G inclusive was offered and received in evidence.)

Q. I notice, Dr. Morgan, that Exhibits 350-A and B are an exchange of communications between you and Mr. Lilienthal in which Mr. Lilienthal expressed some fear of troublesome complication because of numerous other governmental interests affected by determination made by such a board, and referred to the R. W. A. and the Reclamation Bureau and for that reason the matter be submitted to Secretary Ickes before action be finally taken. Were the facts and decision and the progress of negotiations submitted to Secretary Ickes as you went along on this matter?

2058

A. Yes.

Q. Was that through Major Eckel?

A. I had one or two meetings with Secretary Ickes personally, and then after that, Major Eckel was the contact between the man designated by Secretary Ickes to act in his place, and the T. V. A.

Q. I notice in Exhibit 350-A, you were somewhat disturbed by the prospect of putting the cement inquiry up to Mr. Ickes because he was having a controversy with the industry and might advise that nothing be done. Why were you disturbed about having him participate in your inquiry?

A. I think there would be a conflict of relationships on his part. If he were in a direct controversy, he would pretty nearly have to make up his mind whether to give up the controversy and start in a friendly inquiry, or give up the inquiry and continue the controversy. There was a conflict of interest, a conflict of interest and obligation on his part there.

Q. A conflict of interest which did not apply to
2059 T. V. A., would you say?

A. A conflict of status.

Q. I notice in the telegram of Mr. Treanor to you of June 4, 1934, he quotes a letter addressed to Barton Murray, "our Deputy Administrator." The letter is a letter from Secretary McIntyre suggesting that the industry have a hearing before Secretary Ickes and Admiral
2060 Peeples. It appears from this telegram and also in the record prior to this that a telegram from the Code Authority had requested, dated May 15th, an audience with the President on the matter. Then Mr. Treanor says that the telegram contained a request for an audience, with the request that you "inform him of the confusion which would result from any summary order to change marketing methods long established in the industry stop the purposes which the Code Authority had in mind have I believe largely been accomplished through the conferences with Dr. Fetter and the Federal Trade Commission." Did you agree that the purposes had thus largely been accomplished?

A. I do not recall any such agreement.

Q. I mean, not agree with anybody, but would be in accord with the statement that he made that I just read?

A. I would say not. In fact, I do not have in mind now

just what the Code had achieved. I do not think I am qualified to indicate what my opinion was at that time.

Q. He, Mr. Treanor, went on to say, "I do not presume to make any suggestion to you with reference to this matter, but I do think the unreserved facilities which the industry is affording you for a thorough investigation properly entitles it to ask not to be required to deal with another committee upon the same subject at the same time. I am sure it can not hasten but rather would tend to delay arriving at a conclusion. I feel that Mr. MacIntyre's letter was probably written without knowl-
2061 edge of the progress which we had been making. This is an additional reason why I feel free to wire you." Did you then, two or three days after receipt of Mr. Treanor's telegram that I have just been referring to, convey to the President the idea that a change in the marketing methods and the confusion that would result from a change in the marketing methods and the basing point system made it inadvisable to go ahead with any such change?

A. Yes. May I explain that?

Q. Yes.

A. My answer is that based upon the statement in the letter of mine of June 7th, in which I said: "On Tuesday, June 5th, I had a talk with the President about our cement inquiry. I told him that in case the basing point system should be abandoned I thought it should be only on the development of some other policy which would avoid confusion and which could have general application."

2062 Q. Were you speaking of it with reference to the basing point system as applicable to T. V. A. purchases or Government purchases in general, or the system as applied to commercial purchases as well?

A. I question whether our conversation became specific enough to allow an answer for that.

Q. Were you aware at that time that on May 17th Mr. Treanor had written Mr. Rader stating, "The f.o.b. mill prices on Federal business is of no real importance, is entirely practical to grant again, and I think will be forced out of us, therefore good trading would have been to give it without any trouble"?

A. I do not believe I knew that at the time Mr. Treanor sent me a copy of that letter. I believe it was after our negotiations were completed, although my memory on that is not entirely clear.

Q. Did Mr. Treanor, after receiving your letter of June 7th, telegraph you that after consultation with Mr. Rader, Chairman of the Code Authority, that you were at liberty to disclose the result of your investigation as it progresses to the Federal Trade Commission and to Administrator Murray of NRA even though it is based upon data made available to you through courtesy of the industry?

A. Yes. I would like to explain that answer there. The only data we received through the industry, so far as
2063 I know was that first Price Waterhouse study. A copy of that was given to me at the time, or immediately after this first meeting I spoke about. Thereafter our relationships were not with the industry, they were with a committee representing certain companies within our area, and so far as I recall today, that chart, I believe it is a one-page chart, is a synopsis of Price Waterhouse data for the industry as a whole. So far as I recall that is the only thing we ever received from the Cement Institute, from the industry as an industry. The letter that is introduced here from Mr. Treanor,—let me see, it is the letter of May 24th—

Q. The lone one, the 9-page one?

A. May 24th.—the letter indicates that the Cement Institute, I believe, had—or that Price Waterhouse had certain data received from the Cement Institute and that that would be made available for the examination of Dr. Fetter. If any such information had been turned over to us that would also be referred to, I think, by this tele-
gram. I do not know of any information that was
2064 turned over by Dr. Fetter as the result of that inquiry for the Price Waterhouse record, so the only data I know of that we have that came through the industry is that sheet of Price Waterhouse analysis.

The witness identified Exs. 351-A to F as, first, a letter to him, dated June 25, 1923, from Mr. John Treanor; the second, a letter from him, dated June 27, 1934, to John Treanor.

Mr. Wooden: I offer them for the record.

(The documents were handed to counsel for the respondents.)

Examiner Norwood: What do you say to the exhibits, gentlemen?

Mr. Leisure: We have not had time to read them. I would like for your Honor to look, before ruling, at this first letter. It is from Mr. Treanor to Dr. Morgan. (Handing document to Examiner Norwood.)

Examiner Norwood: You object because it is a copy?

2065 Mr. Leisure: No, it is clearly a personal letter. It is not written with the authority of the respondents in this case, and it does not seem to me that it should be offered in evidence as binding any of these respondents. The entire letter shows it is a personal letter, written to Dr. Morgan.

Mr. Wooden: There is some personal touch about it, all right, but there are some other things in it too.

Examiner Norwood: Inasmuch as it is touching these matters it helps to bring out the whole story and I do not see how we can begin to exclude it.

Mr. Leisure: It does not refer to any of the transactions that we have been discussing. It states a political philosophy that a man has which he apparently wants to discuss with Dr. Morgan, as if they were discussing something of that kind at the tea table.

Examiner Norwood: I think it is not to be considered evidence of the truth of that philosophy.

Mr. Leisure: Well, we reserve our general objection that it is incompetent, irrelevant and immaterial to any of the issues in this case.

Examiner Norwood: Do you wish further time to consider it?

Mr. Wooden: How about the other one?

Mr. Leisure: Mr. Treanor was sitting in court
2066 today, your Honor, and attempted to testify to the matter given there, he would not be allowed to under the proper rules of evidence. Not one word of that letter could he state from the witness stand.

Examiner Norwood: Well, I could not follow you that far.

Mr. Leisure: His political theories would be totally irrelevant and immaterial to the issues in this case.

Mr. Wooden: If he wants to put something in a letter on matters that are within the issues in this case, we cannot help it. We all know that sometimes some things get into letters that do not relate to the main topic, but, as a matter of fact, even if there is a political philosophy set forth here with reference to this matter, it is competent.

Examiner Norwood: I shall receive it as qualified by my statement. Received as marked.

(COM. EX. 351-A, B and C was offered and received in evidence.)

2068 Mr. Wooden: There are certain portions of Exhibit 351-A that I want to bring out. Mr. Treanor sent Dr. Morgan a copy of his statement to the Federal Trade Commission, and copies of letters that he had written to Dr. Fetter and Judge Healy. He says:

"Do you remember our talk that morning in the Washington Hotel? You spoke of how business men might act in a capitalistic society, if only they would. We agreed that they could act so, entirely consistently with their practical duties, and that a change of attitude alone was required.

"We agreed also that the process of change would be a long one. We had no idea how it could be started.

"I have been thinking a great deal about this. I have an idea that it could be started in my industry by establishing certain relations with the Federal Trade Commission.

"What would be the effect upon the future conduct of the cement industry if its members were in honor
2069 bound to submit every act and detail of their business in so far as it interested the Commission, to the Commission and to members of its staff?

"Do you think, assuming that my industry is ever inclined to do things that are not consistent with the principles we talked about, that we might be less effectively restrained under such an obligation of candor, than under the old system of suspicion, expensive and futile investigation, and resulting irritation all around? I think not.

"Is the whole notion Utopian? I think not. There are men in the industry who might not know at first what we are talking about, and who when they found out might try to take advantage of the arrangement. But there are many other men, among them very important ones, who would understand all the implications—among them the obligation to use their shrewdness and knowledge of the business to enforce faithful performance of the industry's covenant while it is outstanding."

Examiner Norwood: Are you reading from the exhibit now?

Mr. Wooden: Yes.

Examiner Norwood: I do not see any use reading that into evidence. Those papers were admitted for study, and they show for themselves.

2070 Mr. Leisure: I wish to move to strike that all out from the record, on the ground that there is nothing in the record showing that the author of this letter had any authority from any of the other respondents to write such a letter on their behalf, and to bind them in any way. I ask that it be stricken from the record.

Examiner Norwood: There is no good purpose in striking it; it is already in. But I will not permit any more to go in.

Mr. Wooden: (reading): "But my success in getting all our data offered to you and Dr. Fetter and Dr. David encourages me to think that I can work out almost anything we want, once confidence in the Commission's attitude is established."

By Mr. Wooden:

Q. In your letter to Mr. Treanor of June 27th,

2071 Dr. Morgan, Exhibit 351-C and F, did you take issue with some of Mr. Treanor's position regarding the basing point system along the lines of your marginal notes on his own letter of May 24th that we have already referred to?

A. Yes.

Q. Did you disagree with him with regard to the matter of charging general selling costs against Government purchases?

A. Yes.

Q. I notice the statement in the next paragraph of your letter:

2072 "I still have the impression that if the industry had not felt that the Supreme Court had justified price control and along with it rather large profits, there might not have been the great expansion in capacity between 1925 and 1930."

What was the basis of that impression?

A. I will have to speak from memory. My memory is that of that large expansion in the industry during those years, a larger part of it was not coming into the industry of outsiders who thought they saw money in it, but it was the expansion of the larger units already in the industry. That is my impression at the moment as I speak.

Q. Well, I am asking you for the basis of the impression that you had at the time you wrote this?

A. I think that is the basis of it. I think I got that impression from discussing the matter with Major Eckel and his telling me that the expansion in the industry during those years had been chiefly additional plants of the large companies and not outsiders who thought they saw money in the industry, but I am speaking from memory.

2073 Q. What are the papers I now show you marked Commission's Exhibit 352-A to D for identification inclusive, Dr. Morgan?

A. This is a memorandum to the board of directors of the T.V.A. from myself as chairman. It is dated July 10, 1934. It concerns a meeting of persons to consider the price which T.V.A. could properly pay for cement.

Q. A committee composed of whom?

A. The persons at the meeting, those taking part in this meeting were Morris Leeds, representative of the T.V.A. in its relation to the cement industry, Arthur G. Morgan, chairman of the T.V.A., Mr. Paul David of the T.V.A. who had been examining statistical data at the offices of Price, Waterhouse & Company as an assistant to Mr. Leeds, Dr. Frank A. Fetter of Princeton, and Dr. E. C. Eckel of T.V.A.

Mr. Wooden: I offer those papers for the record and state that the particular physical documents themselves were furnished by the T.V.A. by letter to the Federal Trade Commission in July, 1934, within a couple of days after the date of the memorandum.

Mr. Leisure: If your Honor, please, the exhibit just offered seems to be an inter-office memorandum submitted by this witness. May I ask the witness a question on the memorandum?

Examiner Norwood: Certainly.

Mr. Leisure: Dr. Morgan, did you send copies of that to any of the members of the cement companies you

2074 were dealing with at the time you wrote it?

The Witness: I do not recall. I think it is one that I would not send to them from the nature of it.

Mr. Leisure: I object to it, your Honor. It was nothing that was called to the attention of any of the respondents. It is a memorandum that was used between this witness and his own department.

Mr. Wooden: It is the report of the committee after investigation upon the maximum prices which they should pay for cement, and is a part of this whole sequence of events of the negotiation with the industry as to whether it would buy or build.

Examiner Norwood: That was the report of the witness here?

Mr. Wooden: Yes, his own report to the T.V.A., as I understood it.

Examiner Norwood: Do you testify to the truthfulness of the contents?

The Witness: Yes.

2076 The witness identified Com. Ex. 353A, B and C as
2077 ("The first is") a letter to him from Blaine Smith, Chairman of the Cement Committee.

Q. Was Mr. Treanor a member?

A. No. Mr. Treanor is put down here as a member of the committee. However, he was not interested financially—he was not one of the companies interested.

Q. Well, he might have been a member of the committee?

A. My impression of the committee was it was made up of interested persons, but his name is here as a member of the committee. Now this speaks of our industry committee. There might be some other committee. I do not know what the words "industry committee" refer to.

Q. All right. Go ahead with the identification.

A. That is dated July 25. The other is a letter to Morris Leeds from me, dated August 21, 1934.

2080 Q. What are the papers marked Commission's Exhibit 354-A to D, inclusive (handing documents to the witness)?

A. 354-A is a telegram from me to Blaine Smith. 354-B, C and D is a photostatic copy of a telegram from John Treanor to me dated September 6, 1934.

2082 (COM. EX. 354-A, B, C and D was offered and received in evidence.)

Q. Dr. Morgan, just to keep the continuity of the events in order, Exhibit 354-A, is that a telegram to Blaine Smith generally advising him that you must get your cement either manufactured or purchased without further delay, and that you plan to advertise for bids for a government plant? (Handing document to the witness.)

A. Yes, sir.

Q. Some reference is made in there to a figure of 13 cents for depreciation being ample. Is that 13 cents a barrel, or what?

2083 A. Yes.

Q. Did you get this telegram, which comprises Exhibit 354-B, C and D, from Mr. Treanor as the result of your sending that telegram, that previous telegram to Mr. Smith?

A. Is there another sheet of this?

Q. Yes. (Handing document to the witness)

A. Yes.

Mr. Leisure: I did not understand that question. Did he say he got it as the result of a telegram he sent to some other third party?

Mr. Wooden: That is right.

The Witness: I beg your pardon. I do not know what I got it as the result of. I received the telegram.

By Mr. Wooden:

Q. Mr. Treanor refers to a night letter telegraphed him by the committee, in his telegram. This is September 3 (indicating), and this September what? Fifth or sixth?

A. This telegram says, "Your night letter telegraphed me by committee."

Q. Of which Mr. Blaine Smith was chairman?

A. I have what is here (indicating)

Q. Mr. Blaine Smith was chairman of the industry committee, was he not?

A. He was chairman of the committee of cement manufacturers.

2085 Q. I will ask you generally, Dr. Morgan, did Mr. Treanor make any statements in that telegram to you to which you would take exception as to their accuracy (handing document to the witness)?

A. To begin with, "Inasmuch as you originally suggested my participation in this matter," as I recall the suggestion came from Mr. Treanor, although we talked it over together and the suggestion arose out of our conversation.

Q. All right. Anything else?

2086 A. This is a statement of what is in his mind, and he says, "To my mind you have done" so and so. Now, I cannot deny what was in his mind.

Q. No. I am asking you only for the facts within your own knowledge.

A. He said, "You have done this, I believe, through a deep-set general prejudice against business men." I take exception to that.

Q. Done what?

A. What is in his mind.

Q. It was a question of your building a Government mill, wasn't it?

A. No.

Q. Or announcing it?

A. No.

Q. All right; explain what it was. You will have to clear it up.

A. He said that, "You have kept the word of promise to the ear and broken it to the hope." I can read the telegram if you like. If I make a statement out of it here and there, I might as well read the telegram.

Q. I think you are entitled to state your position on the facts or the alleged facts that are set forth in the telegram to you, and that is what I started out to do.

Mr. Wooden: Your Honor, just in that connec-
2087 tion, the tone of this telegram is such that I believe it ought to be read. I think we will all understand it.

Examiner Norwood: If it is necessary for his explanation, we will have to read it.

Mr. Wooden: As I go along, Dr. Morgan, you will interrupt me at any time that you want to make a statement.

The Witness: I do not want to interrupt you. You may read the telegram through.

Mr. Wooden (reading): "Dear Dr. Morgan your night letter telegraphed me by committee Stop Inasmuch as you originally suggested my participation this matter I feel entitled to wire you my present views Stop The fact that I have long maintained and do maintain a personal loyalty to you entirely free from self interest also entitles me in my judgment to express myself freely and frankly in a personal way not in any way as a member of industry committee Stop I am discouraged and disillusioned by the conduct of this investigation purporting to be a fair inquiry to discover the truth Stop To my mind you have kept the word of promise to the ear and broken it to the hope Stop You have done this unwittingly I believe

through a deepset general prejudice against business men a prejudice unwarranted as I believe in this case at any rate Stop I think that while you have gone through
2088 a form of investigation of this cement matter and while you may believe that you have truly investigated it you have not opened your mind Stop You have in fact as I see it adopted a course calculated merely to coerce the companies by threatened use of arbitrary power to build the Sheffield plant Stop I ask you fairly to consider the record Stop The industry disclosed data as to its own operations without reservation and in all desired detail Stop In return it received the summary memorandum handed to Mr. Killian by Mr. Leeds on July eleventh announcing the authoritys peremptory decision to pay no more than one dollar sixteen cents per barrel for cement Stop Especially unjust seemed to me the wholesale disallowance of overhead items without particulars also the decision to base the price upon the average manufacturing cost of low cost years refusing to allow for demonstrable and undeniable increases in current cost Stop After receipt of the memorandum the Cement Inquiry assumed another phase Stop Both sides agreed to suspend search for a price fair per se and to seek rather to discover a figure equivalent to the Government's cost in case the Sheffield Plant is built Stop Unless this method of fixing the industry price was to be a travesty of fair procedure it was implied that sound princi-
2089 ples of estimating and accounting would be followed Stop I ask you to compare in a spirit of detachment the industry's treatment of this subject with your own Stop The industry submitted its findings in complete detail enabling you to criticize them in detail Stop That these men were entirely sincere I know from having been present when the report was being written Stop I know the industry stands open minded and ready to acknowledge errors or omissions if any which may be discovered in this report Stop The next step in simple fairness should be frank discussion of the report in detail not peremptory and wholesale disavowals that it has any merit Stop I ask you to compare the industry's effort at reasoned treatment of the all important amortization problem with your own arbitrary pronouncement that a thirteen cent rate of amortization will be used Stop Without explanation you have withdrawn your own earlier

determination of a twenty cent rate Stop You contribute nothing in the way of reasoned justification of your new position Stop Why Stop Is your judgment final infallible and not to be questioned by the people whose vital interests are so deeply involved Stop To me your present action is bald assertion of the immense power which is yours through your control of vast Government funds Stop It is a ruthless declaration that this power
2090 can be used at will without obligation to justify its use Stop It is tantamount to arbitrary determination of the industry price under threat of dire punishment in case of resistance Stop Far indeed is this from the spirit of our initial talks and of your own letter of March first very far is it from the spirit of tolerance and understanding which I associate with you Stop You have before you an industry ready and eager to cooperate with the Government in a spirit of complete fairness and ready to have its fairness and sincerity put to any test Stop You have the opportunity to aid in the development of a process of cooperation between industry and Government or to deal the prospects of such cooperation as to this particular industry a serious if not a fatal blow Stop I tell you also as a friend in candor and in all sincerity that it is my belief that if you embark on this project in the face of the alternative which is before you Comma it will result in disappointment and chagrin to you and your associates and an injury to the Administration of which you are a part Stop I remain with kindest feeling

"John Treanor"

2091 By Mr. Wooden:

Q. I thought this morning you were of the opinion that the industry did not have that committee report recommending a maximum price of $1.16. It appears from the telegram that it was handed to you on July 11th?

A. I do not recall the date of the one you mentioned this morning.

Q. July 10, I think.

A. They may have had the conclusions but not the report. You see, that report was more or less confidential and contained confidential statements to our board. We may have given them the conclusions.

Q. Was Mr. Treanor in error in saying that it was handed to Mr. Leeds on July 11?

A. I would say that what Mr. Leeds handed to the committee was not the same as I handed to our board.

If I may continue for a minute. So that the price of $1.16 for standard cement would compare to $1.23 or $1.25 on the cement we actually bought. Mr. Treanor knew that, I think, that it was at those prices that he was objecting, that is, the price of $1.23 or $1.25 for the cement we actually did buy. I wanted to make it clear that the $1.16 was the amount for the cement we did not buy.

Mr. Zimmerman: May I ask a question? I understand practically all of the cement was modified
2092 cement?

The Witness: Yes, practically all. Aside from a little slag cement, my impression is that we did not buy any standard cement under this agreement.

2093 This telegram has many statements in it as to what the writer thought happened in our negotiations. The expression of peremptoriness I think is not justified, because I know we had been making a very careful study, and the time was coming when he had to let contracts for cement or build a mill. We were under a pressure of time, and I think inasmuch as he was at some distance at the time he may not have realized the pressure we were under, the necessity of coming to a conclusion.

I would like also to add that some time later than this he thought the matter over and wrote another letter in a very different temper and said while he did not like the price he believed the negotiations had been carried on in good spirit.

Q. Doctor, we will come to that a little later.

A. Just one minute longer. Now the statement, "You contribute nothing in the way of reasoned justification for your new position," the fact was what he was replying to was a night letter in which one does not always give reasoned justifications for his conclusions. There was opportunity to go over that, but not in a night letter, when I was saying we were under pressure to let contracts. I do not think that it is necessary for me to go over all the inferences of this telegram.

Q. No, just plain matters of fact.

2094 A. I do not see anything else just now that I want to comment on. That does not mean that there are not other items that I want to take exception to if I wanted to make a full statement.

Q. Other items that you would not take exception to?
A. I say that I would take exception to.
Q. Oh.
2095 The witness identified Com. Ex. 355 A and B as a carbon copy of a letter from him to Mr. Blaine Smith, dated September 19, 1934. That letter incorporates in it the telegram that witness had sent to Mr. Smith announcing the maximum price of $1.30 which the T. V. A. would pay.
Mr. Wooden: I offer the exhibit for the record.
(The document was handed to counsel for the respondents.)
Mr. Zimmerman: May I ask if that is the price at the mill?
Mr. Wooden: Yes.
The Witness: Yes.
Mr. Wooden: I will bring that out.
2096 Mr. Leisure: This is a letter to Mr. Smith, did you say, Doctor?
The Witness: Yes.
Mr. Leisure: No objection.
(COM. EX. 355-A and B was offered and received in evidence.)

By Mr. Wooden:

Q. Did you give the industry the privilege or option of quoting a price at or below $1.30?
A. No.
Q. Well, this telegram which you quote in your letter says, "The Authority will consider any quotations"—no, "and any quotations should be at or below figure last mentioned." That was the basis of my question.
A. May I read the letter?
Q. Yes indeed. (Handing document to the witness.)
A. The telegram reads, "The T.V.A. intends not to build a cement plant if cement manufacturers quote a base price not to exceed $1.30 per barrel at mill, plus freight to destination. Where only one mill enjoys the lowest freight rate will consider above base rate plus freight from second lowest freight point. It is understood that this is maximum that authority will consider and any quotations should be at or below figure last men-
2097 tioned. It is our intent to build a cement plant if average price from Holsten and French Broad Dame is higher than those. Rather than name a lower price with

intent of negotiating small differences we are stating the outside maximum. If any differences of understanding remain we suggest they be cleared up by conference before bids are submitted. It is also understood that any change in freight rate will be adjusted as provided by paragraph 24 of invitation."

2098 Q. When the bids came in, can you state whether or not they were on the basis of the maximum figure of $1.30 that you stated would be the maximum?

A. Substantially so.

Q. Do you know on what base the bids were priced when they came in? You referred to an average of $1.30 at the mill, and that there were a number of mills involved at different locations.

A. We estimated the total use under the contract, the total demand under the contract and the average cost, and it averaged just a little less than $1.30, very little less.

Q. Can you say what the range was above and below the average?

A. I think I have some notes on that, if I am not mistaken. (Examining papers) I do not have that data to answer that question in the form you asked it. I could answer it in this way. I have an estimate of the total amount which the T.V.A. would have paid over $1.30 a barrel, and the total amount which it would have paid less than $1.30 a barrel for the contract as a whole.

Q. All right; give us that.

A. The total amount which it would have paid over $1.30 a barrel would have been $121,149. The total amount which it would have paid less than $1.30 barrel would have been $124,288. It would have paid less by about $3,000.

2099 Q. On how many barrels?

A. On 5,300,000 that is included in this. Certain of the dams were left out, as I mentioned, on Holsten and French Broad Rivers.

Mr. Leisure: May we have that explained? I do not understand what the statement is.

Mr. Wooden: It was an average price per mill and a lot of mills were involved, and some of the mills got less than $1.30 at the mill, and some of them got more than $1.30.

Mr. Hershberger: He said, as I understood it, that the T.V.A. would have paid so many dollars more. If what? I would like to know if what?

Mr. Wooden: No, they actually paid a trifle less than $1.30 on the average, represented by a total difference of about $3,000 in the sum of $250,000 or something like that.

Mr. Hershberger: What I do not understand is that he said, "We would have paid so many dollars more," and then he said, "We would have paid so many dollars less." If what? That is what I do not understand.

The Witness: I think I can state it briefly. Because of the fact that where there was only one mill with the lowest freight rate to the job, we made our price apply to
2100 the second closest mill. Therefore the closest mill got a little more than $1.30 a barrel in that case.

By Mr. Wooden:

Q. In other words, they added the freight from the base mill?

A. They added the freight from the second closest mill rather than the closest mill. So they got a little more than $1.30 a barrel.

Mr. Leisure: That was the formula that was arranged?

The Witness: Yes.

Mr. Leisure: Dictated by T.V.A.

The Witness: Announced by T.V.A.

Mr. Leisure: Is that so?

The Witness: Yes. It was necessary for T.V.A. to have more than one source of supply for a big job. We wanted to be sure that we would get bids from at least two mills or three mills in case they were small mills, to a job. We did not want to have one successful bidder only and have to get all of our cement for one job from one mill, so where they were not two mills with the same freight we arranged that we would figure $1.30 at the mill for the next closest mill, and so the closest mill would get a little more than $1.30; but some other mills bid on the job
2101 who were further away than the second mill, and they got less than $1.30 a barrel. So the extra amount over $1.30 at the mill which we paid certain mills would amount on the whole contract—or the part that we calculated here amounting to 5,000,000 barrels in total—the extra amount we paid would amount to $121,000. The amount we paid under $1.30 was $124,000.

By Mr. Wooden:

Q. That was all averaged very close to $1.30?

A. Very close to $1.30.

2102 Q. What was the next nearest mill on which the price was based on $1.30. Do you know that?

A. I do not have the mill prices here.

Q. Well, as I understand it, that situation simply meant that the T. V. A. was accepting the basing point system as the basis for the quotation of prices to T. V. A.?

A. No.

Mr. Hershberger: I object to that as a conclusion. If he wants to ask him a question, all right.

The Witness: That is not so. The T.V.A. undertook to determine what would be a fair price at the mill, and as I stated in this telegram that was just read—I will read that again to emphasize it—"It is our intent to build a cement plant if average price is higher than this rather than name a lower price with intent of negotiation small differences. We are stating the outside maximum."

That is as I told the cement people personally as well in this telegram, I did not want to horse-trade about it, that this was not a basis for further negotiotions; this was our last price; so I did not want to state a price and then say I did not mean it. So this price—what we considered to be a fair price—my own intent was if it was

$1.30¼, we were going to build our mill, that we had
2103 reached our conclusion, and that the industry would have to make up its mind on that and not on the basis of bargaining for a few cents back and forth, but on those figures. Our committee had decided or we had reached the conclusion that $1.30 would be our outside figure. That meant that that we considered to be a fair mill price. If we had only one mill that bid that price, then we would be limited to a single source of supply for building a dam. We did not want to be so limited; we felt that the issues were so great that we must have more than one mill supply, therefore to insure that we would get a supply, we made this $1.30 a barrel apply to at least two mills so that at least two mills could get a mill price of $1.30.

By Mr. Wooden:

Q. Dr. Morgan, can you say whether or not the price at the mill for a certain mill on the Norris Dam ran as low as $1.26 and on another mill to about $1.43?

A. I don't remember, but that may be. I might say that most of this $120,000 overpayment comes from a sin-

gle mill, the Volunteer Portland Cement Company, which happened to be only about 25 miles from our dam.

Q. That was the nearest mill?

A. That was the nearest mill. It happened to be a small mill, and it was our judgment that we ought not rely on that mill alone for supply. It would have been
2104 practically impossible for that mill to supply the Norris Dam, and therefore for us to have made that mill our sole supply would have been a risk we did not dare to take.

Q. Can you say whether or not it was the Penn Dixie Mill that was the second nearest?

A. I would think so, but I am not certain. I would think it would be the Penn Dixie Mill at Kingsport.

Q. Did it occur to you that if some mills were willing to take less than $1.30 at the mill, that it might be advantageous to give your business to such mills instead of the average of $1.30 at all mills?

A. Yes; that and many other things occurred to us in our consideration.

Q. If the $1.30 average price was acceptable to the industry, what would you say about the price that ran about that at the mill, with freight from the basing mill added?

A. There were many considerations that entered into that fixing price. I cannot answer a brief question such as yours with any accuracy or representativeness.
2107 Now, as to the reasons why we made a figures of $1.30 instead of $1.25 for modified cement, one was that the T.V.A. at that time was a little more than a year old. In the first year we had an appropriation of $50,000,000. The second year our appropriation was cut to $25,000,000. There was great opposition in Congress; we did not know whether we were going to have any further appropriations or not; there was in the public mind at that time in the general situation quite a large element of uncertainty. For us to build a cement plant and then get no more appropriations would have been an awkward situation.

2108 Q. Now do you mean then, Doctor, that consideration was a factor in indicating a great liberality in the maximum price that you wanted to pay?

A. Yes. Another factor was that if we built a mill we would have a single source of supply, whereas it would

be more desirable to have more than one source of supply, it would give you the expediency of continuity of service.

Another factor was that with a single source of supply, while for the dams we were building close by we would have a low freight rate, for the furthest dams our freight rate would be higher than though we had different mills where we would have a closer shipment.

Q. Did you have a set-up of raw material that would have permitted making the cement on the river bank, out of a bluff on the river bank, and putting it through a mill by gravity and loading it on the barges by river?

A. May I take just a minute? I would like to get through talking, in answering this question.

Q. Yes.

A. Another factor in that situation was that everybody who had been in the manufacturing business knows that the prospectus of profits that are brought to you, as to what your factory is going to make, do not always pan out.

Q. Yet it is the best that anybody can do in advance, is it not?

2109 A. Yes, it is. There is a degree of uncertainty in the difference between a prospectus of profit and what you get in a shop.

Another factor in the situation was, and I think I am correct in saying this, that in our Board I would be the member who would be most equipped by experience to be responsible for the operation of a plant like this. I think I had never been in a cement plant up to that time, and the amount of responsibility that I had at that time, for me to add the responsibility of making the cement plant operate successfully, it was an additional responsibility that I did not crave, if I could avoid it.

Q. As a matter of fact, you stated in substance that sort of thing in your communications to the industry, did you not?

A. Yes.

Q. That the T. V. A. did not want to go into it, in view of such matters as you just now stated?

A. Yes, and there were other reasons that I may bring up a little later.

Q. Will you tell us what Exhibit 356 for identification is? (Handing document to the witness.)

A. This is a letter from me to Mr. Blaine Smith dated October 15, 1934.

Q. Was that about the time that the bids were submitted on the $1.30 average mill base and as the result of which contracts were entered into?

2110 A. Yes.

Mr. Wooden: I offer this for the record.

Mr. Leisure: No objection.

The Witness: May I be excused?

Examiner Norwood: Certainly.

(The witness confers with Mr. Garrity.)

Examiner Norwood: Who was the addressee in that letter, Mr. Smith?

The Witness: Mr. Blaine Smith.

Examiner Norwood: I mean who was he?

The Witness: He was chairman of this committee of cement manufacturers.

Examiner Norwood: I remember now. It may be received as marked.

Mr. Bond: What is the date of it?

Mr. Wooden: It is dated October 15, 1934.

By Mr. Wooden:

Q. I notice, Dr. Morgan, that you made some statements with regard to the Price Waterhouse data and its adequacy as a basis for determining a fair price. Will you state the substance of that?

A. Before I do that, I want to mention just one other thing in reference to this $1.30 a barrel. It would

2111 have taken us just about a year to build a plant and get it into reasonably smooth operation. If we had not made an agreement with the cement companies we could have probably expected no reduction in price during that time, and as far as we knew we were towards the peak of our construction, and if we did make an agreement with them we would have that reduced price during the year. If we did not we would pay the full price until our plant was in production, and that margin of what we would lose during that year was a factor in coming to a conclusion.

Q. You would have to make a sort of ultimatum as to the maximum you would pay?

A. Yes.

Q. They were holding out above $1.30?

A. Between $1.45 and $1.50.

Q. And you had this Government plant under consideration for nearly a year before you decided not to build?

A. Yes. What was your other question?

2116. Q. When you made this mill base price, maximum price of $1.30, did not that permit the mills to submit the bids which they did submit, that were on an identical delivered basis?

Mr. Leisure: Now, Your Honor, I do not understand that question. At least I do not understand how this witness can answer it.

Examiner Norwood: Read the question.

(The question was read by the reporter.)

Mr. Leisure: There are two questions in one there.

Examiner Norwood: He may answer.

Mr. Wooden: It is only one question.

Examiner Norwood: I think the question is clear.

A. The best answer I can make to that question is that such bids were submitted.

By Mr. Wooden:

Q. Identical delivered bids?

A. Substantially.

Q. Yes.

A. I would like to add to that statement this, that this was during the NRA regime. We were getting simi-

2117 lar, identical bids, from a very considerable number of industries. It was becoming a common practice at that time, in a variety of industries, to have similar bids, and we included in our contract with these companies the statement that if at any time their contract was found to be in contradiction to the NRA Code, which was the law of the land at the time, that the contract should be cancelled. So that so far as we could we were working according to what was then the accepted law of the land, not only in this industry but in other industries, and that provided that if that law was broken the contract would be cancelled.

Q. Was cement about the most important commodity that you were purchasing?

A. Yes.

Q. Did it ever come to your attention that the law creating the NRA provided that the Codes should not permit or promote monopolistic practices?

Mr. Leisure: I think we are taking up unnecessary time with that kind of question.

Examiner Norwood: I think so.

Mr. Leisure: Whether it came to his attention or not is not material. I object to the question.

Examiner Norwood: Objection sustained.

By Mr. Wooden:

Q. What are the papers marked Commission's
2118 Exhibit 357-A and B for identification (handing document to witness)?

A. The first is a telegram from me to Mr. W. R. Chambers, General Engineering and Geology, T. V. A., giving a public statement concerning the receipt of bids, and the second sheet is a newspaper release which is substantially the same, which is largely the same, but has some differences of wording. I have not checked over to see just what the differences are.

Q. Was the press release worked out in consultation with the representatives of the industry?

A. I believe it was referred to them before it was released. That is my understanding.

Q. The file indicates there are several drafts with corrections and changes on them. That is the release as actually issued, is it not?

A. The second sheet has written at the top "As Released," so I suppose it is.

Mr. Wooden: I offer those papers for the record.

The Witness: I wish to say in this connection that not being a lawyer and not thinking of how uses might be made, the wording there, that we have worked with the cement industry—we worked with a group of a certain number of companies and our relations were with those.

2119 If I had prepared that for cross examination I would have said we had worked with certain companies in the cement industry, to be technically correct.

By Mr. Wooden:

Q. Is that your present thought on the matter that you are now expressing?

A. It was the fact of the matter.

Examiner Norwood: You worked with a committee representing certain mills, is that right?

The Witness: Yes, Mr. Blaine Smith, then president of the Pennsylvania Dixie Portland Cement Company, said at the time of the first lunch I had with Mr. John Treanor, that he was the only person there who was directly inter-

ested, that he would get into touch with the managers, or the men who spoke with authority for other mills, and see if they would work with him. He annouced that he had done so, he was chairman of the committee, and from then on our relations were with Mr. Blaine Smith as chairman of a committee of the mills from which we would probably buy cement in that region.

Examiner Norwood: Was the Cement Institute interested in keeping in touch with the situation, with the negotiations?

The Witness: As to how much they were in touch through Mr. Blaine Smith, I do not know. There is
2120 an indication here they were in touch through Mr. Treanor to some extent, but our own contract was with this committee, or through my personal frienship with Mr. Treanor.

2121 By Mr. Wooden:

Q. I was going to ask you, Dr. Morgan, what Tennessee Valley mills Conn represented when you first had your conference with Mr. Treanor and others?

A. I have testified to that.

Mr. Leisure: We went all over that yesterday. I do not see why we need to go back.

By Mr. Wooden:

Q. It was not a Tennessee Valley mill at all?

A. I did not know that Mr. Conn had any mill.

Examiner Norwood: Is there an offer pending on Exhibit 357-A and B?

Mr. Wooden: No, we got into some side issues. I have not yet actually made the offer.

By Mr. Wooden:

Q. What Tennessee Valley mill did J. S. Young of the committee represent?

A. What company is that? Atlas?

Q. I don't know; J. S. Young was on the committee.

A. I don't know.

Q. What Tennessee Valley mill did J. R. Hanahan represent?

A. I think the Volunteer Portland Cement Company.

Q. George Killian?

A. The Penn Dixie Portland Cement Company.

Q. That was Mr. Blaine Smith's company too?

2122 A. Yes. If I am not mistaken, Mr. Young was Atlas—no, Lehigh.

2123 (COM. EX. 357-A and B was offered and received in evidence.)

Q. Did Mr. Smith or any representative of the industry make the suggestion that the public release be a matter of collaboration between you?

2124 The Witness: I don't know how the suggestion originated. I think that possibly one of the other men here who was present at the latter stages of that could answer that better than I, because as soon as the main decisions were made, the rest of the work was largely carried on by members of our staff, and I have an impression that there was an understanding that a release would be made that would be satisfactory to the parties. I have that general impression. I may have gone further than that; I cannot recall.

By Mr. Wooden:

Q. What was the idea in having the release jointly prepared?

2125 A. I think that would be a suitable way to do wherever two parties have arrived at a conclusion after long negotiations. It is just a natural way of doing business, I should think.

The witness identified Com. Ex. 358-A to I as nine sheets of paper bearing date October 24, 1934, entitled "Synopsis of Studies and Work Done in Connection with Plant in the Manufacture of Cement near Sheffield, Alabama". So far as he can see, it does not have a name on it. The witness thinks that probably Mr. W. W. Chambers prepared it, "who is here in the room and was my assistant in some of this work". The witness believes that the particular papers he holds are copies of those from the files of the T. V. A.

2127 Mr. Leisure: As to this exhibit, I do not know what it is. It is a long document—but without taking the time to read it, it is clearly apparent that it is incompetent, immaterial and irrelevant as to the issues in this case. There is no basis laid for making it material, there is no testimony that it was shown to any of the respondents or that it can in any way bind them. If Mr.

Wooden wants to give me a chance to look at it, I may not have any objection to it.

Mr. Wooden: As the Doctor said, it is a synopsis, a running chronological description of the various steps in these negotiations, and so on. Much of the basic material that that is concerning is already in evidence.

Mr. Leisure: As I understood it, the Doctor said it was something that was prepared after this agreement was entered into, so under any consideration it would not be admissible in evidence.

Examiner Norwood: Did you prepare this?

The Witness: No.

Examiner Norwood: Are you testifying to the truth of the facts in there?

The Witness: I have not testified about it at all.

Examiner Norwood: Can you do so?

The Witness: Some I can and some I cannot.

2128 Q. Let me ask you this right here, Doctor, whether you know about the matter covered at the bottom of page G?

A. (Reading) "October 4, Thursday, Messrs. Young"—

Examiner Norwood: (Interrupting): Do not read it. Testify to the facts independently of the paper after refreshing your memory.

The Witness: I believe the statement to be true, but as I say, that was a matter that was handled by members of our staff after I had largely ceased to have intimate association with the negotiations after the main determinations had been made.

2129 Mr. Wooden: Your Honor, I hold in my hand a paper marked Exhibit 359 for identification. It is a copy of a letter from Blaine Smith for the committee, addressed to C. F. Conn, President of the Cement Institute, dated October 26, 1934. It relates to this matter, and I am stating for the information of counsel that this paper was obtained by an agent of the Commission, Mr. Casto of the San Francisco office, from the files of the Calaveras Cement Company in California. I am suggesting 2130 that it be received or further identified, but that that now be waived or deferred, and if necessary it can be checked readily by respondents from documents which should be available to them. I thought we might save time by putting it in as we did some other documents obtained

under similar circumstances, subject to check for authenticity.

Mr. Leisure: Subject to check as to whether or not it is an original, we have no objection.

Examiner Norwood: You waive identification for the time being on that?

Mr. Leisure: Yes.

(COM EX. 359 was offered and received in evidence.)

Mr. Wooden: There is a paragraph in the letter, Your Honor, which clears up this whole matter of the release. I would like to read it. It is from Mr. Smith to Mr. Conn, President of the Cement Institute:

"There is no disposition in the TVA to give undue publicity to the matter and, in order to prevent garbled reports appearing in the papers, and in order to get
2131 the matter clearly and fairly presented, the TVA cooperated with the Industry Committee in the preparation of a news release, which was finally issued October 15th in the attached form. Since agitation of the matter is undesirable, it is hoped that both members of the industry and the TVA will find it unnecessary further to make the matter a subject of public discussion through newspaper interviews, speeches, articles for newspapers or magazines, or otherwise."

Q. What are the papers marked Exhibit 360-A and B for identification, Dr. Morgan?

A. This 360-A and B are two sheets which constitute a statement which I prepared and which I believe I furnished to the cement companies who had bid on our work. The statement is entitled "Considerations which influenced the distribution of cement purchases by the Tennessee Valley Authority in October, 1934."

Mr. Wooden: I offer the paper in evidence.

Mr. Leisure: Dr. Morgan, how was that exhibit used, this 360; what was the purpose of preparing it?

2132 The Witness: There was much discussion among the cement companies as to competition for allotments of cement. There was competition for allotment of cement under this contract. In making the allotments, we used our own judgment and not any recommendations from individual cement companies. They naturally wanted to understand on what basis we had made these allotments, and this was a statement I made indicating the considera-

tions which governed us in making the allotments of cement to the different companies under the bids.

Mr. Leisure: About what date was that paper prepared?

The Witness: It seems not have a date. I thought it probably was attached to a letter that had a date. It should have a date, but it has not. It would be subsequent to the letting of bids.

2133 Mr. Leisure: Then this went to the members of the industry that you were discussing?

The Witness: My impression is that it went to the members of the industry and to the press if they wanted it.

Mr. Leisure: No objection.

(COM. EX. 360-A and B was offered and received in evidence.)

By Mr. Wooden:

Q. Was one of the main considerations or main elements in the allotment, the giving of business to the nearest mill?

A. It was one consideration, yes.

Q. Did any industry representative participate in figuring or in the calculation of the allotments?

A. I thought they all did or offered to do. Each one of them gave their reasons why they should get more than they did get.

Q. I mean, before it was decided what the allotment should be.

A. Yes. I do not know that all of them did, but most of them came with their pleas as to why they should get a certain amount.

Mr. Leisure: That is, all of the companies whom you were discussing this with?

2134 The Witness: Yes, the companies who had put in bids or were going to put in bids.

By Mr. Wooden:

Q. Did Mr. Blaine Smith or any member of his committee participate in working out the actual allotments that were actually made?

A. I believe not. Mr. Blaine Smith wrote me a long letter indicating what allotments he thought we ought to make, and then he expressed—well, I had a communication from him not quite as unpleasant as that from Mr. Treanor, but somewhat along the same lines—because he thought he ought to have gotten a share which he did not get.

Q. The second point that you gave as the considerations influencing the allotment was this: "Within reasonable limits those mills should be favored which have the lowest freight charges and the lowest mill net prices as in that way the cement industry as a whole will profit most from the orders being placed." I suppose it is impossible to determine the relative weight given to the some four of the factors which entered into your determination of the allotments?

A. I could scarcely at this time. It may be that Mr. Chambers who worked on this job with me and some of the other members of the staff have the matter more clearly in mind than I, but we balanced them up with these factors in view and we worked out the allotment, and I could
2135 not today reconstruct the details of the process.

Q. What are the papers marked Commission's Exhibit 361-A and B for identification, Dr. Morgan?

A. 361-A is a letter from Blaine Smith to me dated October 23, 1934, in which he expresses his appreciation for getting some of the business. 361-B, C and D is a letter from me to Mr. Blaine Smith in reply to his, and 361-E and F is a letter from Mr. Treanor to me on the same subject.

Mr. Wooden: I offer those papers for the record.

Examiner Norwood: It there any objection?

2136 (COM. EX. 361-A to F. was offered and received in evidence.)

Q. Referring to Exhibit 361-A, the first paragraph, Dr. Morgan, I note that Mr. Smith talked about the awards being made or announced by Mr. Garrity last Saturday afternoon, and he had figured out the quantities. Do you know what that means?

A. The awards were made while I was out of town, and just what he means by figuring out the quantities I do not know, except this, that a good many of these awards were made by percentages, that is, we had a list of the amount of cement that would be used on any dam and each
2137 company was to receive a certain percentage of that, rather than the barrels, and he probably figured out the number of barrels that percentage would amount to. I might say that allotment was made by Mr. Chambers, Mr. Garrity and myself, and then approved by the T. V. A. Board. No representative of any cement company had anything to do with the allotment, nor knew anything about it. Nobody else in our staff knew anything about it. It was

entirely a closed matter until it was put to the Board for approval.

Q. Were the factors entering into the allotment, or the basis for the allotment, discussed with representatives of the industry?

A. I received letters from one or more members of the industry making suggestions, but so far as I know there was no discussion except that, oh, I might say that for months before the allotment was made various members of the industry would give me good reasons why they should receive allotments.

Q. I mean the factors such as capacity and nearness to the point of delivery, and things like that.

A. I think that those had been mentioned to me in the course of the month before a number of times.

2138 Q. In Exhibit 361-E Mr. Treanor wrote that he thought your settlement was right in spirit and that it was substantially a fair adjustment, in view of all the facts. Distribution to all the mills was also fairly made, it seemed to him. Is that correct?

A. Yes. This letter, incidentally, was written after the telegram that I read a while ago.

Q. Yes, it is quite obvious that it is in a considerably different tone

2139 Q. What are the papers marked Commission's Exhibit 362-A to D inclusive?

A. This is a letter from Arthur M. Miller to Dr. H. A. Morgan, director of the Tennessee Valley Authority. Mr. Miller, I believe, was a manager of our fertilizer plant at Muscle Shoals.

Q. The T. V. A. fertilizer plant?

A. Yes, the T. V. A. fertilizer plant at Muscle Shoals, and this is a discussion of the possibility of using a part of the old fertilizer plant for the manufacture of cement.

Q. What is the date of it?

2140 A. This is dated February 3, 1934. I might add that our later studies indicated that it would be very expensive and not feasible to make cement at the fertilizer plant.

Mr. Wooden: I am not offering these papers at this time. They are just merely numbered for identification.

The Witness: We found that cement could be made much cheaper at a new plant than by using the old one.

Mr. Wooden: I think I am through with Dr. Morgan on

direct examination. I could go on, but I want to facilitate his getting away, if I can.

Examiner Norwood: Cross examine.

The Witness: I made on statement a while ago. You asked me if the next nearest mill to the Norris Dam would be the Penn Dixie mill. I was mistaken in that. It would be the Signal Mountain mill at Chattanooga.

Mr. Wooden: All right. That is all I have.

Examiner Norwood: Go ahead.

Cross Examination by Mr. Leisure.

Q. Dr. Morgan, you stated on direct examination conducted by Mr. Wooden yesterday that in the case of identical bids there was no competition expressed. Did you mean by that that similarity of price showed you that there was no competition, that when the prices were iden-
2141 tical you had no way of determining?

A. I tried to make it clear in that statement that there was no competition evident to me. The prices did not give evidence of competition.

Q. You did not mean that that showed to you that there was no competition?

A. No.

Q. You recognized, and you do now, do you not, that standard products are often sold on identical prices in a given market?

A. I am not greatly acquainted with mass production. I know wheat is sold that way, and steel, and cement, and some other products, a few other products.

Q. I just wanted the record to be clear as to whether or not you felt because the prices were identical that there was no competitition. As I understand you now, you do not draw that conclusion?

A. I really do not know about other products, because while wheat and pig iron may have an advertised identical price, I do not know what the practice is closely enough to answer.

Q. Now, Mr. Wooden asked you both yesterday and today, Dr. Morgan, about your keeping in touch with other departments, with certain other departments of the government during these negotiations, and I believe you answer was that you did, and that you designated certain
2142 individuals to be responsible for keeping up these contacts. Does that correctly state the facts?

A. Yes.

Q. Now, you not only kept the Federal Trade Commission posted, kept contact with them, but also with the President himself. First let me ask you if on June 5 you had a talk with the President and attempted to keep him informed on the cement inquiry?

A. I talked to the President, I will say that. As to the date of it I do not recall, but on a few occasions I did; not more than two or three occasions, or three or four occasions.

Q. And in keeping the Federal Trade Commission informed, did you tell Mr. Healy on June 5, Mr. Healy of the Federal Trade Commission, as follows: "I am just telling you about it as we go along. I want to kep in touch with you. With the approval of the cement industry we might appropriately explain data that you do not have, and, on the other hand, you can probably help us to keep from overlooking things that are important and that we ought to have." Did you make that statement to Mr. Healy on June 5? (Handing document to the witness.)

A. Yes.

Q. Very good. Mr. Healy was at that time chief counsel of the Commission?

2143 A. I believe so.

Q. Now as the result of these negotiations that were carried on, did you finally, or did you not finally arrive at what you and your committee believed to be a reasonable and fair contract, and a reasonable and fair price for the cement which you purchased?

A. Yes, taking all the factors into account we did.

Q. And as to these negotiations that were carried on with the industry,—and when I say "industry" I am using it in the sense that you say you used it and Mr. Wooden used it all through your examination, namely, the mills that were interested in producing cement—

Mr. Wooden: (Interposing). I do not want myself to be bound by that, that I used it in the same way that the witness did on the stand.

Mr. Leisure: I want the record to be very clear on that, because if there is any misunderstanding between counsel and the witness, I think it is only fair your Honor, that that should be cleared up.

Examiner Norwood: I think the record is clear on that.

Mr. Wooden: The record is clear on that.

Mr. Leisure: That is what the witness intended.

Examiner Norwood: The record is clear on that.

The Witness: If you do not mind, I would like to
2144 indicate just what I meant.

Mr. Wooden: He can say anything he likes.

The Witness: The relations we had, after the first luncheon that John Treanor arranged, were almost absolutely solely with this committee of, I think it is, ten companies. There is in the record a letter from Mr. Rader of the Cement Institute to me, released, saying certain data could be made public. I had forgotten that I would not have known of it if it had not been developed. So far as I know I did not reply to it. So far as I know I had no contact with the Institute in any way, shape or manner, during these negotiations, so far as I can recall.

On the other hand, I presumed that so important a project as this would not be carried on without the Cement Institute and others knowing about it, and I just presumed, from my knowledge of how business is done, that Mr. Blaine Smith, or members of his committee, would be informing other people in the industry about it. I did not presume that our relations were being kept from the industry at all, but our relations were with the committee of which Blaine Smith was chairman.

2145 Q. That is, you did not feel, Doctor, that your negotiations were secret so far as the industry was concerned, that others might have knowledge of them, but the point of my question was whether or not your negotiations were not carried on entirely with the members of certain mills that were going to supply the cement?

A. Except for my relations with John Treanor, who was a personal friend.

Q. And you have described how that contract happened?

A. Yes.

Q. By accidentally meeting him in Washington at the hotel?

A. Yes.

Q. And there were committees for T.V.A., of T.V.A. men also, were there not?

A. There were about three different committees that I recall at the moment—three or more. There was the T.V.A.—well, there was one committee consisting of Mr. Leeds, representing T.V.A., and Mr. Killian, representing the cement companies. They worked out the basis of a

study. That was a sort of a two-man arrangement. Mr. Leeds reported to our Board on the basis of a study. Then there was a T.V.A. committee consisting of Mr. Leeds, Dr. Eckel, Dr. Fetter, and I think Mr. David was possibly—I am not certain whether David was a member of that, but they carried on studies for us: Then there was still another—there were one or two other committees.

2146 When we were studying the cost of building a mill for ourselves, I believe that there was a committee appointed through Blaine Smith of cement people to criticize, to examine and criticize our estimate of what it would cost to build the mill. That was a sort of a committee different than this one of the ten companies. It is one they picked out for the purpose of criticizing our estimates.

Q. Do you recall how the personnel of those committees was selected, Doctor?

A. The T.V.A. Board selected, at my suggestion, selected Mr. Leeds. Mr. Blaine Smith suggested Mr. Killian, or the committee did, as to men who would work out a basis of procedure. As to the committee representing the cement companies, Mr. Blaine Smith took that matter in hand, and I do not know what happened within the industry. As to our own committee, we got suggestions from a large number of sources, I think from possibly a dozen different sources as to who would be suitable. For instance, I think Secretary Ickes suggested Major Eckel, and I think Joe Willis, the Dean of the Wharton Business School suggested Major Eckel. Two or three people, I think, suggested Dr. Fetter, of Princeton.

Q. Do you know who they were?

A. He had been consultant for the Federal Trade Commission here, and he had written a book on basing points in steel.

Q. Were you dealing with Mr. Healy at that time

2147 during these negotiations?

A. Yes. But we had sources of suggestion as to who would make up that committee, from quite a large number of people. I remember Secretary Ickes and the Dean of the Wharton School both suggested Major Eckel.

Q. You don't remember the sources of any of the other members of the Committee?

A. I remember one or two sources that it would be improper for me to mention, perhaps, that is, within the Government. I have seen a list of them recently, but I can not

recall at the moment. We rather looked far and wide for the suitable sources for the men for that committee.

Q. Now, in carrying on these negotiations, Dr. Morgan, what was the spirit of these negotiations? Was it one of confidence being reposed in each other and of trying to come to a common understanding on a common problem?

A. I think I would call it confidence tempered with a little nervousness, possibly. It was a sort of a new kind of an undertaking, and both sides were sort of feeling their way a bit on it, but I think—

Q. (Interrupting) What did you mean by "tempered with nervousness"? Would you just make that clear, please?

A. Well, I think that for an industry and an agency of the Government, each one to disclose everything they had to the other, was a new experience, and I think Mr.
2148 Treanor's telegram exhibits the nervousness, and along with it was—I sometimes felt there was a little bit—I don't suppose either side divested itself entirely of attitudes, of being heartbroken over the price being too low, and so forth. I don't think there was a complete absence of a front, of appearing—well, I doubt if the cement people were quite as broken-hearted over the price as they appeared to be. On the other hand, I am rather of the opinion that the figures we gave as what we could make cement for were possibly a little bit optimistic. I am not certain that the figures we gave each other were just the same as we would have been willing to invest on ourselves. We did not entirely eliminate that element.

Q. Now, Doctor, I notice that you said either yesterday or today, you used the phrase that rather than pay exorbitant prices, you would build a mill. Did you mean for the record to show by that that you felt that the prices were exorbitant, or that you wanted to find out whether they were? In other words, had you come to any conclusion?

A. When we began, I had come to no conclusion. When we were finished, I felt that the prices we had been paying would have been exorbitant; that the prices we paid for our first cement were too high.

Q. And that was taking into consideration all of these different circumstances as you have described?

2149 A. Yes.

Q. The large quantity of cement purchase and the special advantages that the T.V.A. had, taking everything

into the circumstances, I felt it would be too high. They did not mean that the cement companies were making any money in 1934, before we entered these negotiations.

2150 Q. And you have already said, I believe today, that you did not intend that your views as to the price of cement there should be taken as a national yardstick? That you know nothing about other conditions?

A. No, so far as I know, cement ought to be sold—might be sold—cheaper over the country, as far as I know; our price was a little too high, that is, we got the best price I could arrive at. I am rather inclined to think we could have gotten a little lower price, but for one thing, we had a whip hand on the companies; they would sell their cement at almost no profit rather than have a mill there. I had a coercive body there, I had a certain public responsibility not to use capriciously, and I think to some extent that entered into the price, to try to meet the responsibility of not being capricious where I happened to have the power to do so. I tried to take every factor into account in making this price.

Q. You said that as far as you know, the price you received for cement might have been cheaper in other parts, and it follows also that it might have been higher too and might have been perfectly fair and reasonable?

A. In other parts of the country, I think perhaps on the Pacific Coast, it might have been higher.

Q. Well, outside of your own particular study, you do not attempt to pass on it in any other district, do you,

2151 Dr. Morgan?

A. No, but I have the impression that we paid enough for our cement.

Q. In view of these circumstances?

A. Yes.

Q. I believe there was a statement made that Mr. Treanor had used the words "controlled competition." Did you understand that Mr. Treanor meant by that phrase an agreement between the various companies on the price, or individual self-restraint to avoid secret rebates and such things? What did you understand by "controlled competition" as used by Mr. Treanor?

A. I should have to back up to that time to answer it. I would say that at the time I went into this negotiation, I had a feeling that there was agreement within the industry to control competition. That was the feeling when I went

into the negotiations, based largely on having received identical bids.

Q. And when you came to know something about basing prints, and the way it operated, did there come a time when you had any occasion to change that opinion which you had arrived at before you got into the study of these matters?

A. In some respects, I did. When I went into the study, I did not know what cement ought to be selling at, I did not know but what cement ought to be selling at 80 cents.

I came to the conclusion that the status of the indus-
2152 try was sounder than I had supposed, that the exploitation, if any, was less than I had supposed, but I cannot say that I came to the conclusion that there was no control from within.

Q. Well, you did not pass on it either way, did you?

A. No, I did not pass upon it either way; I did not pass upon it either way, but I did not come to the conclusion that there was no such control.

Q. Nor did you come to the conclusion that there was such control did you? The matter was not before you for consideration, was it?

A. Not directly. I think I had an impression that in some way or other a certain unity of actions arose. I do not know what the process is by which unity of action did arise, but I am of the opinion that a certain unity of action did arise that was somewhat more than spontaneous, that somewhere or other there was a discipline in the industry. Just how that worked, I have no idea.

Q. You of course are talking about a time when there was a code?

A. Yes.

Q. Isn't that so?

A. Yes.

Q. And you knew that there was open price filing in the code, during the code period?

A. Open price filing?

2153 Q. Yes.

A. I thought you said "fighting."

Q. Open price filing.

A. Yes, there was open price filing within the code, but those were the conditions under which we worked.

Q. Mr. Conn who has been mentioned several times, he attended this first meeting, I believe you said?

A. Yes.

Q. He did not attend any subsequent meetings, did he?

A. I think not. So far as I can recall, I never met Mr. Conn before or since, and so far as I can recall I never had any communication with him before or since.

Q. In your discussions with Mr. Treanor, did he ever explain to you what he meant by the basing point system?

A. Yes.

Q. Do you remember what his explanation was?

A. I doubt if I could do it justice. He spent an hour or a couple of hours with me, I think, in explaining to me just how he considered it worked, but I believe that I would scarcely be able to reproduce the gist of that.

2154 By Mr. Leisure:

Q. Now, Mr. Wooden showed you a letter from Mr. Treanor—I think it is dated May 27, 1934?

A. I have that here.

Q. Did you feel that that letter was written subject to the understanding that these matters should be treated as confidential while you were carrying on your negotiation?

2155 A. I felt that the information we received from the industry relating to prices and costs, statistical data and related data, that that was definitely confidential and received on that basis. By "the ifidustry" I have reference to these ten companies. We were allowed to go to the mills; generally we were especially requested not to take data away from the mills with us—that is, Mr. David was. And the Price Waterhouse people specifically said that this data must not be kept in our files, and I feel somewhat delinquent perhaps in making certain that none of it did stay there. In the flux of things, some things stayed in our files where possibly we were under direct obligation to get them back again, but I felt very definite obligation as to the information which these ten companies furnished us either through Price Waterhouse Company or through direct visits to the mills, or our direct deductions from those. I think that I am very deeply committed to hold those as confidential.

Q. And that was the spirit of the negotiations, as Mr. Treanor sets out here: "The information that you gain in this way is to be subject to the same conditions as that which I furnish you personally." Was that not the spirit

of the negotiations, that you were to be able to talk freely with each other in confidence, off the record, as it were?

A. Yes, but I think that there is a distinction between any data received from the industry and that re-
2156 ceived from these ten companies, because there is a letter from Mr. Rader of the industry saying that the information received from the industry could be made public, but except for that one sheet that I spoke about, the early data of Price Waterhouse which I got at the time of our first luncheon, there is very little if anything in our files that I know about that comes from that source.

Q. From the Institute?

A. Yes. They came from these ten companies Mr. Rader had nothing to say about. Our obligation was to them and not to the Institute.

Q. That is true. So that the understanding that you had was as to these ten companies and not with the Institute in any way?

A. Yes, but I think that I probably was not clear in my testimony before. This letter of May 27th refers, I think, to material which Price Waterhouse had furnished the Institute, if I am not mistaken, so that I am inclined to think that that material would have been released if we had in mind the letter from Mr. Rader later, but as a matter of fact, it was provided that Dr. Fetter would go to Price Waterhouse and get this. So far as I know, there is none of that material in our files.

Q. Well, Mr. Treanor goes on to say that it is for the "unofficial use and guidance of you and the small group of men whom you have selected for this study."

2157 A. Yes.

Q. Did that apply to letters and telegrams that you were sending each other while you were carrying on these negotiations?

A. Well, now you are asking me a question that requires perhaps knowledge of law.

Q. I am not trying to be technical; I am just trying to get what your understanding was as to whether or not you were having a confidential relationship here until you could try to work this matter out, or whether you thought the whole thing ought to be public from the beginning.

A. Well, I looked upon it—I will say this. The information we received of a statistical nature from the in-

dustry, which we had only because we had their confidence and was given with that understanding—that I think is confidential. Confidential letters may pass back and forth between people, but in a court of law they are no longer confidential. I suppose that is my assumption of what the situation would be. I have not the right to withhold them if they are asked for by a proper authority. I might have gotten an affectionate letter from my wife—I don't know how this is in law, but that might be called for although I would not publish it. But so far as this data is concerned that came in based upon the obligation of confidence, I feel that that confidence is a serious obligation and the information we got through these
2158 ten companies either directly or through Price Waterhouse in my opinion, we have that under definite obligations to hold that confidential.

Q. Of what good or what use was that understanding with the industry where in the first hearing they have presented against them all of the information brought from the T. V. A. files and presented against them?

A. It has not been presented so far. There is a confidential file which has not been presented here; the material in it has not been presented here.

Q. You think the letter of Mr. Treanor's limits the understanding to technical data as you have described it?

A. Why, it seems to me it reads that way. That is not necessarily saying that there are no letters in there that I would not prefer not to have public, for instance, that telegram from Mr. Treanor to me is about as painful a communication as I ever received, and yet if that is called for in court, I do not know that I have a right to withhold it.

Q. Even though if was sent in confidence or it may have been sent in confidence?

A. I am speaking of my crude knowledge of legal rights. I question whether I have a legal right to reserve that, whereas, as to this statistical data, it seems to me that that is in a different class where we received it under those conditions.

2159 Q. Do you feel that is not public?

A. That has not been made public here.

Q. When you said yesterday that prices were filed with the Institute, did you mean that they were filed with the Code Authority? You were describing prices being filed,

and I think you made a mistake—I think it is on page 2019 of the record. Will you just look at it and tell the Examiner whether you meant there the Code Authority instead of the Institute?

A. My impression was that under the Code, that those were sent to the Code Authority, but my impression also was—just an impression—that in earlier years they
2160 were sent some place else. I have that impression, but it is an impression.

Q. You mentioned a 20-year period of T.V.A. this afternoon. T.V.A. was not authorized as a 20-year program, was it?

A. There is no definite terminus to the program. It depends upon annual appropriations by Congress.

Q. You put on a 20-year amortization, and the industry put on a 5-year amortization, and I just wanted to bring out that T.V.A. was not a 20-year program.

A. There is no terminus to the T.V.A. program in the statute. There is a probability that after a few years construction will greatly decrease because of the major work being finished.

Q. In your letter of September 19th, the one that sets out the telegram in which T.V.A. stated to the bidder the maximum price it would pay for cement, isn't it true that the price set by T.V.A. was not the basis of costs in the cement industry, but rather your formula was dictated by certain peculiar facilities enjoyed by T.V.A.? Let me read to you from your letter—I won't bother to read it to you, but isn't that true?

2161 A. May I just refresh my mind?

Q. Suppose you just look at that paragraph. (Handing document to the witness.)

A. Yes, that mentions the peculiarly favorable circumstances that we were in for making our own cement. In some elements we were in very favorable circumstances, in most of the physical elements. There were certain other elements where our situation was not so favorable, especially in the lack of experience in manufacture. There were some elements that were favorable and some were not, but all the physical conditions were very favorable.

Q. And you stated, Doctor Morgan, did you not, "We therefore reached our conclusions on proper cost partially from Price, Waterhouse data, partly from other sources, and partly from estimates of what the cost would be of making our own cement?"

A. That is true.

Q. It was not merely the T.V.A. committees that you were dealing with that wanted to keep the other departments informed, it was the spirit of the industry committees too, everybody wanted to keep other departments informed, to make this well-known to the departments that might be interested, is that not so?

A. So far as I know, that is so. Mr. Blaine Smith particularly brought that matter up and suggested
2162 keeping the Department of Justice informed.

Q. That was the spirit of the meetings, of keeping the proper departments of the government informed of your negotiations as you went along? There is no doubt about that, is there?

A. So far as I know, that was the spirit.

Mr. Leisure: That is all.

Redirect Examination by Mr. Wooden.

Q. Can you say, Dr. Morgan, whether or not the Department of Justice was informed, or that it was merely suggested that it be informed?

A. My understanding of the situation is this, that Mr. Blaine Smith asked me, or said to me, that he thought the Department of Justice should be kept informed. Later he came to me and asked me about it,—I am getting this partly from my records and partly from a letter which he wrote me recently, sending me about a ten-page memorandum,—and I referred him to Mr. Fly, who was then our chief solicitor and who had just recently come from the Department of Justice where he was on the staff of the Attorney General, I believe, and one of our directors was general counsel for us, but Mr. Fly was general solicitor, and having just come from the staff of the Attorney General, he seemed to be a person who would make contact best.

2163 Q. How recently was this that Mr. Smith sent you the memorandum?

A. That was within the past month. Then Mr. Smith had informed me that he took it up with Mr. Fly. I had forgotten. Unless there is a paper here on it, it has passed out of my mind. He wrote me that he took it up with Mr. Fly and Mr. Fly said it would not be necessary. Now we discussed those things, but my own memory would be inadequate on that.

Q. In other words, you do not know whether the Department of Justice was kept informed during the progress of these 1934 negotiations?

A. My own memory is blank on that, largely blank. I do know that in the record of one of our telephone calls, taken down by my secretary, Mr. Blaine Smith asked me to inform the Department of Justice, and I said, "All right." Now I think that that was followed through, but my memory is not clear on that.

Q. Now in your notice to the industry that you were setting this $1.30 average mill price as the maximum did not you also say that bids must be submitted at or below that figure if you were not to go ahead with your proposed government mill?

A. Does not it say that they must average at or below that figure? I thought that was the expression used.

Q. I do not believe it said "averaged or below." I think the $1.30 was an average.

2164 A. I think the expression "average" is in there.

Mr. Zimmerman: The exhibits speaks for itself.

Examiner Norwood: I think so.

By Mr. Wooden:

Q. Were you intending to set $1.30 as the price the industry must quote, or that that was the maximum that they must quote if you were not to build your own plant?

A. What I intended to convey to them was that if the cost to the T.V.A. averaged more than $1.30 plus freight that we would build our own mill.

Q. You had no objection if any one wanted to quote less than $1.30?

A. Absolutely not.

Q. And did you after that go through the routine of asking for bids from the various mills?

A. Yes.

Q. They might have been competitive, that is, they might have been $1.30 on the average at the mill, another $1.24, and another $1.28, for instance?

A. Yes.

Q. Without conflicting in any way with your conditions?

A. No, no, not in the least. You see, we were only a relatively small agency here. We observed how the government was buying cement and the price it was paying,

and we took steps which resulted in a reduction of
2165 that price, but we were not dictating the organization of the American industry.

Q. You were just seeking to protect yourself as a buyer of cement?

A. Yes. We hoped we might make some contribution to the general situation, but that was like building a dam and getting good labor relations as a side issue.

Q. Do you know to what extent the Federal Trade commission was kept advised throughout the progress of your negotiations?

A. After we got started I only kept in touch with the main outlines of the undertaking, and Mr. Paul David was assigned to keep the Federal Trade Commission informed. From time to time he informed me of having met members of the Commission. That was the way I discharged that obligation, as I saw it, through him, just as through Major Eckel, in reference to the Department of the Interior and the War Department.

I think on two occasions I personally visited the Federal Trade Commission and talked once with Judge Healy, and once with one or two other members of the Commission, or one or more other members. I do not remember how many. On one of those meetings, Mr. Treanor and I together visited some members of the Commission. That was partly in reference to the T.V.A., partly in reference to the proposal that Mr. Treanor wanted to make, that the
industry open its books completely to the Commis-
2166 sion, and both of those subjects were discussed.

Q. Did you ever ask the Federal Trade Commission to pass upon the question of what was a reasonable price, or what your action should be with regard to the price you would pay?

A. I believe not. I think we did have this information that, as we started, Major Eckel came to the Federal Trade Commission and got such data as the Commission had on the cost of making cement, and such data as the Commission had on the subject was part of our information. So that what they had we had.

Q. But the Commission was not in on the final settlement of what the proper price should be, or anything of that kind?

A. So far as I know it was not.

2170 Q. You spoke of the way in which you exercised—
2171 the restraint which you exercised, I believe you used the words "coercive power"?

A. Yes.

Q. Mr. Treanor's telegram, that you referred to, charged you with the abuse of coercive power, did it not?

A. Yes.

Q. Did you not write to the industry on several occasions that you would not build a mill except as a last resort, or words to that effect?

A. Heartily to that effect.

Q. Showing your extreme reluctance?

A. Sure. We did not want to build a mill if we could buy cement at a reasonable price. As to that price of $1.30, I went over that, towards the end, with Mr. Leeds, who had been our adviser in this all the way along.

Q. Did you, at that time, make any study to ascertain whether or not these mills in the vicinity of the Tennessee Valley were accepting less than $1.30 in their commercial sales, $1.30 at the mill?

A. I cannot answer that specifically. We had an idea we did know what they were receiving, I think, what some of them were receiving, because when we received
2172 bids we could calculate the freight and see what the mill price would be, so that that information was, in general, not out of our reach.

Q. I am not talking about what they were receiving on the bids submitted to you, but what they were accepting at the mill on sales made in commercial purchases.

A. I know that some time before there had been what was called the cement war, when prices broke to what was 60 cents a barrel, or something of that sort, at the mill.

Q. I am not talking about what happened before, but at the time you were carrying on your negotiations did you find out what they were accepting at the mill on commercial purchases?

A. I cannot recall. It may be that Mr. Garrity or Mr. Chambers, who are here and who kept in touch with sales, can answer that.

Q. Mr. Leisure made reference to the open price filing under the Code and to the Code Authority as distinguished from the Cement Institute. Did you ever know what the relation between the Code Authority and the Cement Institute was?

A. I did not know. I do not recall that I did.

Q. You do not know whether or not the Code Authority was composed of representatives chosen by the Institute?

A. I do not happen to know.

Q. Now, as you understood it, the open price filing under the Code was that each bidder would file his prices with the Code Authority and then be notified of what
2173 all other bidders had filed?

A. Well, I had not thought of that before, I had not thought of whether those bids were made public. I did not know.

Q. Now, you were asked some questions about your impression as to whether there was a concerted control over competition, and I believe you said that you retained some impression to that effect, even after going through these negotiations; is that right?

A. I said that before these negotiations were undertaken I had a very definite impression to that effect, and that when the negotiations were through I was not convinced to the contrary.

Q. Yes. What were the things that underlay your impression, the impression that you referred to?

A. Why, my early impressions were partly the result of buying cement on other jobs and finding uniform prices.

Q. Delivered?

A. Delivered, and partly of trying to break those prices.

Q. Trying to?

A. Yes.

2174 Q. You made some statement about steel and cement being sold at uniform delivered prices, and then you mentioned wheat in the same category, I believe.

A. Not in the same category; I did not intend to.

Q. What did you mean?

A. Well, I may have mentioned them together, but they are in a very different category. During the Code period we received identical prices for a variety of products.

Q. Delivered prices?

A. Beg pardon?

Q. Delivered prices?

A. Uniform delivered prices, I believe. Now, Mr. Garrity, who is our purchasing agent, I think can give you cases, a variety of cases where that occurred. We still get that kind of bids in some fields, I believe.

2178 Washington, D. C.
Tuesday, January 18, 1938.

2179 W. E. HAYGHE was recalled as a witness on behalf of the Commission, and having been previously duly sworn, testified further as follows:

Direction Examination (Resumed) by Mr. Wooden.

Q. Mr. Hayghe, I am showing you Exhibit 335-A to II, inclusive, comprising a number of papers relating to invitation No. 6194. Will you give us the salient facts
2180 in that case just like you did in the other cases when you were on the stand?

Mr. Leisure: Is that Exhibit 335 relating to Brooksville?

The Witness: This represents an advertisement to bid on 132—

Mr. Leisure (Interposing): Would you mind identifying it so that we can tell in the record just what you are speaking about?

The Witness: This is Exhibit 335.

Mr. Leisure: It goes from 335-A to Z, does it?

The Witness: They are not completely identified.

Examiner Norwood: It is not necessary to letter those which have been withdrawn. Just letter those which will be left in. What would those be?

Mr. Wooden: They would consist of the computations. There is one sheet of tabulations which are computations based upon the other papers.

Examiner Norwood: Let us give those permanent numbers or letters.

Mr. Leisure: Also, any he testifies from—he says "this"—we would like to have him identify so that we will know what he refers to.

The Witness: This (indicating) appears to be Exhibit 335-A to II, and represents an invitation to bid
2181 on 132 barrels of cement for use at the County Hospital, Brooksville, Florida. Bids were received from the Lone Star Cement Corporation, the Georgia Cement and Products Company, the National Cement Company, Universal Atlas Cement Company, Pennsylvania Dixie Ce-

ment Corporation, Alpha Portland Cement Corporation, Florida Portland Cement Company, and the Lehigh Portland Cement Company.

2182 By Mr. Wooden:

Q. What were the amounts bid by the respective bidders?

A. The Florida Portland Cement Company bid, under alternate bid No. 1—

Q. That is the f. o. b. destination price?

A. That is the f. o. b. destination price; yes, sir—$2.46 per barrel. Under alternate No. 2, which is the Government delivered cost to destination, $2.38591 per barrel.

The Alpha Portland Cement Company bid, alternate No. 1, $2.46 per barrel and under alternate No. 2, $2.35 418 per barrel.

The Lehigh Portland Cement Company bid, alternate No. 1, $2.46 per barrel; alternate No. 2, $2.35418 per barrel.

The Lone Star Cement Corporation bid $2.46, alternate No. 1, and, alternate No. 2, $2.35418.

The Georgia Cement & Products Company bid, alternate No. 1, $2.46 per barrel, and $2.35418 per barrel under alternate No. 2.

The National Cement Company bid, alternate No. 1, $2.46 per barrel; alternate No. 2, $2.35418 per barrel.

The Universal Atlas Cement Company bid, alternate No. 1, $2.46 per barrel, and, alternate No. 2, $2.35418 per barrel.

The Pennsylvania Dixie Cement Corporation bid, alternate No. 1, $2.46 per barrel; alternate No. 2, $2.35418 per barrel.

The contract was awarded, by drawing, to the

2183 Florida Portland Cement Company.

Q. Was it based on alternate 1 or alternate 2?

A. Alternate 2.

Q. Now, will you state from the papers you have before you what would have been the result had the Government been able to deduct the commercial rate and add back the land grant rate instead of deducting only the land grant rate and adding back the land grant rate?

Mr. Leisure: I object to that. It is purely argumentative. I also object to the form of the question as to what the Government would have been able to do. I do not think this witness can testify to that. It seems to me the question is objectionable.

Examiner Norwood: He can give us as a matter of

convenience the result of those calculations. I do not see how that is going to hurt anybody.

Mr. Wooden: It is just a continuation of what he was doing the other day.

Mr. Leisure: It is the form of the question I object to. He is asking "Had the Government been able to do something else" which is not shown here. It seems to me it is not proper testimony.

2184 Examiner Norwood: It is just a form of question to get the calculation.

Mr. Wooden: I might ask had there been no control clause.

Examiner Norwood: Read the question.

(The question is repeated.)

Examiner Norwood: Just answer those calculations; what the figures would be in that case.

The Witness: Is that with reference to the bid of the Florida Portland Cement Company, the successful bidder only?

By Mr. Wooden:

Q. No; any others.

A. With respect to the Florida Portland Cement Company, the deduction of the commercial freight rate from the f. o. b. destination price and the addition of the land grant freight rate would have resulted under alternate No. 1 in a price of $2.450044 per barrel as compared with the government destination price of $2.38591 per barrel.

Q. A difference of 7 cents per barrel?

A. A pproximately 7 cents, yes. However, had it been possible—

Mr. Leisure (Interrupting.) A difference which way?

2185 Mr. Wooden: Making the cost higher on the government destination basis.

Mr. Zimmerman: No; the other way.

Mr. Wooden. I beg your pardon.

The Witness: Yes, just the opposite.

Examiner Norwood: Did you say $2.450044?

The Witness: That would have been the result if the commercial rate charge had been deducted from the alternate No. 1 price, and the land grant rate charge added to the remained. However, in the case of the bid of the Alpha whose shipping point was Phoenixville, Alabama, we find that the alternate No. 1, had it been possible to deduct the

commercial freight charge and move the shipment under government bill of lading and take title at the point of origin and add the land grant freight rate, the total cost would have been $2.041658 as compared with the Alpha's alternate No. 2 bid of $2.35418, or approximately 31 cents lower than the alternate No. 2.

By Mr. Wooden:

Q. In other words, if the award had been made by lot and happened to fall to the Alpha, that then would have been the situation?

A. Not under the present method of bidding with the control clause. We could not have done that because
2186 under their alternate No. 1, it is provided that the shipments will move on commercial bills of lading.

Q. At any rate, what does that difference of 27 cents represent? Do not refer to alternate No. 1 and No. 2, but define it, in other words, use general language that any one can understand?

A. A difference of 27 cents you say?

Q. 31 cents.

A. It represents the difference betwen the commercial freight rate and the land grant freight rate.

Q. Do I understand the government would have profited 27 cents if it had been able to do the thing that it could not do?

A. No, sir; 31 cents.

Q. All right; I cannot get that 27 out of my head. But that is the answer, only the figures are different?

A. Yes.

Q. All right. Now, I am showing you papers marked exhibit 336-A to Y inclusive. Will you give us the salient parts, just as you have in the other case?

The Witness: This exhibit represents invitation No. 5949 dated December 12, 1936 for 132 barrels of cement for use in the sewers in St. Petersburg, Florida. In
2187 response to the invitation, bids were received from the Universal Atlas Cement Company, the Pennsylvania Dixie Cement Corporation, the Alpha Portland Cement Company, the Florida Portland Cement Company and the Lehigh Portland Cement Company.

The Pennsylvania Dixie Cement Corporation bid under alternate bid No. 1—

By Mr. Wooden:

Q. (Interposing.) Let me suggest that you give all of the bids first on Alternate No. 1, and then on Alternate No. 2 instead of dividing them by companies.

2189 A. In the case of the Pennsylvania-Dixie, I am afraid it is not complete because I do not see their alternate No. 1 bid reproduced here. However, it is shown on the abstract of bids. Is that sufficient?

Q. Yes. For present purposes we will take it that way.

A. They bid, under alternate No. 1, $2.32 per barrel.

The Florida Portland, under alternate No. 1, $2.32 per barrel.

The Universal Atlas, under alternate No. 1, $2.32 per barrel.

The Alpha Portland, under alternate No. 1, $2.32 per barrel.

Lehigh Portland, under alternate No. 1, $2.32 per barrel.

Under alternate No. 2, the Pennsylvania-Dixie bid $2.2946 per barrel.

The Florida Portland, under alternate No. 2, $2.2946 per barrel.

The Universal Atlas, under alternate No. 2, $2.2946 per barrel.

The Alpha Portland, under alternate No. 2, $2.2946 per barrel.

The Lehigh Portland, alternate No. 2, $2.2946 per barrel.

The award was made by drawing, to the Florida Portland Cement Company based upon their alternate No. 2 bid.

2189 Q. Will you give us the results of your computations as you did in the other case?

A. In the case of the bid of the Florida Portland Cement Company, deduction of the commercial freight rate, under alternate No. 1 bid and the addition of the land grant freight rate, would have produced a cost of $2.31088 per barrel as compared with their alternate No. 2 bid of $2.2946 per barrel or approximately 2 cents higher by that method of computation than the alternate No. 2 bid.

In this case, had we been able to award the contract to the Lehigh Portland, shipping from Boyles, Alabama, deducting the commercial freight charge from their f. o. b. destination price and adding the land grant freight charge, it would have produced a total cost of $1.83548 per barrel as compared with their government cost to destination price of $2.2946.

Q. How much difference does that make?

A. Approximately 46 cents per barrel could have been saved had it been possible to use that method in making the award.

Q. Under alternate No. 1?

A. Yes, sir.

Q. I am now showing you Exhibit 337-A to BBB, inclusive. Will you give us the salient facts in that case just as in the others?

A. This exhibit represents invitation No. 11,283
2190 dated December 10, 1936, for 150 barrels of cement for use in repairing and improving roads at Red Bay, Alabama. Bids were received from the Carolina Cement Supply Company, the Pennsylvania-Dixie, the Alpha Portland, the Lehigh Portland, Hermitage Portland, Universal Atlas, Georgia Cement & Products Company, Signal Mountain Portland Cement Company, National Cement and the Lone Star Cement.

The Lone Star bid, under alternate No. 1,—f. o. b. destination—$2.39 per barrel.

The Pennsylvania-Dixie, under alternate No. 1, $2.39 per barrel.

The Alpha Portland, under alternate No. 1, $2.39 per barrel.

The Lehigh Portland, under alternate No. 1, $2.39 per barrel.

The Hermitage Portland, alternate No. 1, $2.39 per barrel.

The Universal Atlas, alternate No. 1, $2.39 per barrel.

The Georgia Cement & Products, alternate No. 1, $2.39 per barrel.

The Signal Mountain, alternate No. 1, $2.39 per barrel.

The National Cement, alternate No. 1, $2.39 per barrel.

The Carolina Cement Supply Company bid only one way—f. o. b. cars, Birmingham, Alabama—$2.10 per barrel.

Q. What is the name of that concern?

2191 A. The Carolina Cement Supply Company.

Q. You do not know whether it is a mill or dealer?

A. That is right; I do not know.

Q. It appears to be not one of the well known mills, at any rate?

A. No, sir.

2192 A. Under alternate bid No. 2:

Lone Star bid $2.34722.

Pennsylvania Dixie, $$2.34722.
Alpha Portland Cement, $2.34722.
Lehigh Portland, 2.34722.
Hermitage Portland, $2.34722.
Universal Atlas, $2.34722.
Georgia Cement & Products, $2.34722.
Signal Mountain, $2.34722.
National Cement Company of Birmingham, Alabama, $2.34722.

Carolina Cement Supply offered no alternate No. 2 bid.

The award was made to the Lone Star Cement Corporation by drawing.

Under the bid of the successful bidder f. o. b. destination, deducting commercial freight charges and adding the land grant freight charge, the total cost of $2.29036 per barrel could be obtained as compared with their alternate No. 2 bid of $2.34722, a difference of approximately 5 cents per barrel in favor of the alternate No. 1 could it have been evaluated in that manner.

Q. I am now handing you Exhibit 338-A to GGGG inclusive. Will you go through them in the same way as you have the others?

A. This exhibit represents invitation No. 9031 dated September 15, 1934, 400 barrels of cement for use at 2193 Huntsville, Alabama. Bids were received from Georgia Cement & Products, Lehigh Portland, Universal Atlas, Lone Star Cement, National Cement of Birmingham, Penn Dixie and Alpha Portland, Hermitage Portland, Signal Mountain, the Huntsville Transfer & Building Material Company—

Q. (Interposing.) Is that a mill or a dealer?

A. I don't know.

Q. All right, go on.

A. The O. K. Matthews Lumber Company.

Q. Is that a mill or a dealer?

A. I could not say.

Q. All right.

A. The Hutchens Company, the Dilworth Lumber Company, the Geron Lumber Company, the Noojian Hardware & Supply Company.

Under alternate bid No. 1, the Lone Star bid $2.39, Georgia Cement & Products, $2.39—

Examiner Norwood: (Interposing.) Did all the others you have named there bid the same thing, $2.39? If they

all did, just state that fact. You have already given a list of the names.

The Witness: All of them did not bid the same price.

By Mr. Wooden:

Q. In so far as they did, state in that way, and then give the exceptions.

2194 A. The following companies bid $2.39: Lehigh Portland, Universal Atlas, National Cement of Birmingham, Pennsylvania Dixie, Alpha Portland, Hermitage Portland and the Signal Mountain.

Under alternate bid No. 2, the same companies bid $2.23668.

Q. You mean by "the same companies," the ones you have last mentioned?

A. Yes, the companies just mentioned.

The following companies submitted bids f. o. b. cars Huntsville, Alabama, only.

Q. Was that the destination?

A. Yes. The Huntsville Transfer & Building Material Company, O. K. Matthews Lumber Company, the Hutchens Company, Dilworth Lumber Company, Geron Lumber Company, and the Noojian Hardware & Supply Company.

Examiner Norwood: Was that f. o. b. their shipping point?

The Witness: F. O. B. destination. The f. o. b. destination price of all but two in the latter group was $2.44 per barrel, the exceptions being the Geron Lumber Company which bid $2.49 per barrel and the Noojian Hardware & Supply Company which bid $2.43¾.

By Mr. Wooden:

Q. What was the destination bid of the first group?

A. $2.39.

2195 The award was made to the Lone Star.

Q. By drawing, or how?

A. By drawing. Had it been possible to deduct from the alternate 1 price of the successful bidder, the commercial freight rate from the shipping point, Boyles, Alabama, to destination, and added the land grant rate, a total cost of $2.21877 would have resulted as compared with their alternate 2, Government destination price, of $2.23668, a difference of approximately 2 cents per barrel in favor of the alternate No. 1, evaluated as indicated.

Q. Does that mean that it cost that much more the way it was actually handled than if it were handled the other way?

A. Yes, sir.

Examiner Norwood: What was that question and answer?

(The reporter read the question and answer.)

By Mr. Wooden:

Q. Based on your experience in handling these various matters that you have been describing and analyzing, what would you say, Mr. Hayghe, has been the affect of the control clause upon your purchase of cement?

2198 The Witness: It has been varying. It has not been the same in every case. In some instances, the control clause has resulted in higher prices than could have been obtained by using the destination price deducting the commercial freight rate and adding the land grant rate.

In other cases; the Government cost to destination price —that is, alternate No. 2 bid—has produced a lower destination cost than the alternate 1 bid.

By Mr. Wooden:

Q. You ought to be satisfied with that, Mr. Leisure. That has been illustrated by some of the particular cases you have named there or have been going over?

A. Exactly.

Q. Sometimes it ran one way and sometimes another?

A. Exactly.

Q. Do you have in mind, or have you any means of knowing, in what proportion of the cases or in all cases, it runs one way or the other?

A. No, sir.

Q. Do you have any basis for knowing how much it runs one way or the other in terms of cents per barrel?

2199 A. The differences cover wide ranges. In some instances it is a few cents and in some cases it runs up to 40 and 50 cents per barrel.

2200 Q. Whichever way it ran, have you found the result to be identical delivered prices and costs?

A. I beg your pardon?

Q. Whichever way the difference ran between alternate No. 1 and No. 2, have you found the result to be identical delivered prices and delivered costs to the government?

A. Those cases that we have computed, to the best of my knowledge there was not one where the result was the same under alternate 1 and alternate 2.

Q. How were these particular cases selected?

A. More or less at random.

Examiner Norwood: Will you read the answer before the last?

(The answer is read.)

Mr. Wooden: That is hardly a responsive answer to the question.

The Witness: You mean the total cost to the government at destination?

By Mr. Wooden:

Q. Yes.

A. To the best of my knowledge, in no case was the total cost to the government under No. 1, deducting commercial freight and adding land grant, the same as the total cost bid.

Q. But within the terms of the alternate No. 1 taken separately from No. 2, and then within the terms of
2201 the No. 2 taken separate from the No. 1, what would you say?

A. I do not quite catch that.

Q. Well, what has been your experience as to whether the bids on the alternate No. 1 basis resulted in an identical delivered price?

A. To the best of my knowledge they never did result in identical delivered price.

Q. And as to alternate No. 2?

A. If you will pardon me, I do not understand that.

Q. The question is, whether within the terms of alternate No. 2, the result was an identical delivered price?

2202 Examiner Norwood: I think the question limits him to cases that he knows about, but does not limit him to the cases that are referred to in these particular exhibits that have been put in here. But I do not think the witness understands the question.

The Witness: I do not. May I answer it in my own way?

By Mr. Wooden:

Q. Answer it in your own way, and we will see if that is responsive.

A. Do you mean, is alternate 1 bid of any bidder iden-

tical with the No. 2 bid? Or the bids of the different bidders?

Q. No. Just forget the different alternates and take alternate No. 1.

A. Of a single bidder?

Q. Of all the bidders.

A. Usually the alternate No. 1 bid price of all bidders is identical.

Q. Now, as to alternate No. 2?

A. As to alternate No. 2, in the majority of cases they were identical. There has been some slight variation in very few cases.

Q. That was the government destination cost?

A. That is the government destination cost.

2203 Q. Have you made any efforts to avoid the effect of the control clause?

A. We did, recently.

Q. Will you describe just what was done and what the result was?

2204 A. We selected a particular requisition in the State of Alabama and instructed the State Procurement Officer in issuing invitations to include as a condition of the invitation that any bids purporting to show a total cost to the Government at destination, land grant freight rates to be deducted and shipments to move on Government bills of lading, were indicated as irregular bids and would not be considered.

Mr. Leisure: May we have the time and the particular place filed on that?

By Mr. Wooden:

Q. Here are some papers that I think relate to it (handing papers to witness).

A. (Examining papers) Under date of December 30, 1937, the State Procurement Officer at Montgomery was instructed to issue invitations to cover 833 barrels of cement for use at Scottsboro, Alabama, and in connection with the invitation he was instructed to insert the following clause, quoting from the invitation: "Bids purporting to name a guaranteed delivered cost to the Government at destination with the provision that cost at the mill may be determined by deducting from such delivered cost the lowest freight rate available to the Government, shipments to move under Government bills of lading, have been designated as irregular bids, and will not be considered."

Under date of January 3, 1938, Invitation No. 16876
2205 was mailed by the State Procurement Officer to the following companies—

Q. (Interrupting) Did the invitation contain the instructions which you have just quoted?

A. They did.

2206 Q. You have those invitations there?

A. I have the original invitation.

Q. Now will you please tell us what the outcome of the effort made along those lines was?

2208 Mr. Wooden: Let the record show that the papers which have been under discussion have now been marked for identification, Exhibit 363-A to GGG, inclusive. I would just as soon offer them for the record, with the understanding with the witness that copies may be substituted for the originals.

Examiner Norwood: They will be received as marked.

Mr. Wooden: Your Honor, at the suggestion of respondents' counsel, I am willing to confine the offer in this case to Exhibits 363-A, B, and C and forego the offer-
2209 ing of the bids.

Mr. Leisure: And will we be able to photostat these?

Mr. Wooden: Any part you like.

(COM. EX. 363-C was offered and received in evidence.)

Q. Now, Mr. Hayghe, will you continue with your description of just what was done in this case and what the results were?

A. The State Procurement Officer issued invitations in accordance with instructions, including the clause which I have just read, in each one. The bids in response to the invitation, however, ignored the clause entirely and the bids furnished were in accordance with those which have been received in the past; that is, subject to the control clause, alternate 1 and alternate 2.

Q. Has that situation ever been met with in other states than the one which you have before you which, I believe, is Alabama?

Mr. Leisure: I object to that.

2210 Examiner Norwood: He can state that if he knows.

The Witness: To the best of my knowledge it has not been done.

By Mr. Wooden:

Q. Have you had anything similar to this control clause come up in your purchases of commodities other than cement?

A. To the best of my knowledge, no.

Q. Do you have any difficulty when purchasing commodities, other than cement, in getting the full benefit of the land grant rates?

Mr. Leisure: I object to the question whether or not he has any difficulties. It is ambiguous and he should state what he means by "difficulties."

Examiner Norwood: Read the question, please.

(The reporter read the question.)

Mr. Leisure: That is objected to, Your Honor.

Mr. Hershberger: That is objectionable, Your Honor, because it assumes that he has had difficulty in getting the full benefit of the land grant rates in connection with the purchase of cement. That is a controverted question and is a question that is in issue in this case.

Examiner Norwood: That is the reason he can answer whether he has or not. He can tell us what those difficulties are.

2211 Mr. Hershberger: He bases his question on the premise that he does have difficulties in purchases of cement and that is objectionable; in other words, if he wants to testify as to difficulties in getting the land grant rates, let him so testify, but I do not think it is proper to base his question on the assumption that he does have difficulty in getting the land grant rates in connection with cement purchases. That is the way the question is framed.

Examiner Norwood: Objection overruled. Answer the question.

The Witness: With the exception of cement, I have no knowledge there has been any difficulty in securing bids both f.o.b. origin and f.o.b. destination.

Mr. Leisure: Had you finished your answer?

The Witness: I think so.

Mr. Leisure: I move to strike out the answer. It is very apparent that what difficulties this witness had in life in other matters, has nothing to do with the issues in this case and that is the point of my first objection—as to his difficulties—because I thought that would become apparent when he explained his difficulties. I move to

strike that out as not being pertinent to any issues in this case.

Examiner Norwood: Motion denied.

2212 Q. Did I ask you whether you had encountered anything in the nature of a cement control clause in your purchases of other commodities?

A. Yes, sir, you did.

Q. What is the purpose of your exercising the functions you do as traffic officer?

A. To assist in the evaluation of bids and the award of contracts, to supply commercial and land grant freight rates to be used in connection with f.o.b. origin prices to determine which is the cheapest, origin or destination.

Q. Is getting the advantage of land grant rates one of your functions?

A. Not in that respect. Our function is limited to the quoting of the rates that are available.

Q. You quote the available land grant rates, do you?

A. Yes.

Q. Would you say that it is your business to see that the government goods move as cheaply as possible

2213 over the transportation lines?

A. Yes, sir.

Q. Do you endeavor to get government property moved on government bills of lading as far as possible?

A. That depends upon the circumstances. If there is any advantage to be secured by taking title to property and moving it on government bills of lading, our effort is directed to that end.

Q. And do you have to do that in order to take advantage of land grant rates?

A. We do. May I correct that?

Q. Yes.

A. It is not essential that a shipment move on a government bill of lading; it is essential, however, that title to the property be secured at point of origin. The land grant is available regardless of the type of bill of lading used.

2214 Q. The bill of lading follows along as more or less automatic result?

A. The Government bill of lading is merely a convenient way of assessing and collecting transportation charges on Government property.

Q. Now, from your testimony the other day, it appears

as I recall it, that in the great majority of States and in the great majority of cases, the mills do not bid at all on W.P.A. requirements for cement, is that right?

A. That is the result of our survey, yes, sir.

Q. Where the bids are made through the dealers or by dealers, are you then able to get the benefit of land grant rates?

The Witness: Usually the dealers bidding are those located at the site of the project and there is no shipment involved.

By Mr. Wooden:

Q. Can you say whether or not the cement itself, however, comes from the dealer's warehouse or from the mills to the project?

A. I could not testify as to that.

2215 Q. Didn't you testify the other day that in many cases at any rate, it came from the mills direct to the project?

A. There have been instances.

The Witness: There have been instances brought to our attention where shipments have been made from the mill to the project point and awarded to dealers.

By Mr. Wooden:

Q. To what extent have you attempted the substitution of Government bills of lading for commercial bills of lading with the dealers?

2216 The Witness: Lately not at all.

By Mr. Wooden:

Q. What do you mean by "lately"?

A. Within the past year or year and a half, I should say.

Q. Prior to that time, what would be your answer?

A. There was an effort made in Georgia to accomplish that, which was successful to a certain extent in that the State Procurement Office made certain arrangements with the dealers to permit the Government to take title at the mill and remove it under Government bill of lading. That practice, however, as I testified the other day, was discontinued.

Q. Was that done in any other State?

A. To the best of my knowledge it was not.

Mr. Wooden: I ask to have these papers marked Commission's Exhibit 346-A to FF for identification.

(The papers referred to were marked for identifi-
2217 cation "Commission's Exhibits 364-A to FF," inclusive.)

By Mr. Wooden:

Q. What are the papers I hand you marked Commission's Exhibit 364-A to FF, inclusive?

A. These are copies of letters and telegrams received from the State Procurement Office in Jackson, Mississippi.

Q. Do they relate to the matter of substitution of Government bill of lading for commercial, by arrangement with the dealers?

A. Yes, sir, this letter seems to indicate that that was the case (indicating).

Q. Did your office here at Washington first approve and then disapprove of that method of handling?

2223 The Witness: In this particular instance, approval was given by the Washington office to this procedure, but only after the fact. The State Procurement Officer was instructed, however, in this approval after the fact, that for the future, invitations to bid should indicate whether the shipment should move on Government bills of lading or not.

By Mr. Wooden:

Q. Was any arrangement made in Mississippi whereby the dealers agreed with the State Procurement Officer to permit the substitution of Government bills of lading for commercial?

2226 A. We have advice from our State Procurement Officer at Jackson, Mississippi, that he did make such an arrangement with the Roberson Brothers Wholesale Company.

Q. These matters come over your desk?

A. This particular one did, yes, sir.

Q. In the usual and ordinary course of your business as head of the traffic division?

A. Not in the usual course, but in this case it was a rather unusual extension of our activities.

Q. It came over your desk?

2227 A. Yes.

Mr. Zimmerman: I say, was it after the Trade Commission had suggested that you look after it or have it brought to your desk?

The Witness: No, sir, this came at the time the transaction took place.

By Mr. Wooden:

Q. When was that?

A. December, 1935.

Mr. Wooden: Is there a question pending?

Examiner Norwood: Was it your duty to act upon the matters which those papers relate to?

The Witness: Ordinarily, no, sir, but in this particular case it was referred to me for action.

Q. What was the amount involved in that Mississippi case?

2228 A. The amount of what?

Q. The amount involved between the result of if they substituted the government bill of lading for the commercial?

A. The net amount or saving is stated as $948.99 on 4094 barrels of cement.

Q. And as I understand it, that saving was not allowed in that case?

A. It was allowed in this particular case.

Examiner Norwood: Those are the same matters that were dealt with in Exhibit 330?

Mr. Wooden: They are somewhat similar, your Honor, and I will precipitate the whole question by offering those papers for the record now. Let me say in making the offer that they are offered on the ground that while containing some admittedly hearsay, they are admissible under the exception to the hearsay rule of entries and records and writings made in the usual course of business and under the statute passed in June, 1936, and so far the offer is on the same ground as the offer of Exhibit 330. To that I wish to add the offer is made on the additional ground that while containing some admittedly hearsay statements, they are competent under the well-recognized exception to the hearsay rule at common law that they are part of the res gestae. We have shown here certain acts of the respondents. We have cer-

2229 tain results and effects of those acts occurring more or less automatically and naturally. At the time that the acts of the respondents took place, certain repercussions took place, and we offer these papers on the double ground of entries and records made in the usual course of business and as part of the res gestae.

Mr. Zimmerman: That is the new and novel ground, is it not?

Examiner Norwood: I want to ask the counsel for the government if the government has ever ruled that these bills of lading may be used for shipments where the property is paid for partly by the United States Government and partly by the state government or municipality or some political subdivision?

Mr. Wooden: None of them are paid for partly by the states, as I understand it. How about that, Mr. Witness?

The Witness: I would not like to testify about that; I do not know enough about the purchase procedure to offer anything of value there.

Mr. Wooden: The state is not buying the cement, at any rate. I think we will agree on that.

2230 Mr. Leisure: If your Honor pleases, I wish to object to Exhibit 364-A to FF now if they are offered, on the ground that they are incompetent, immaterial, and irrelevant, and on the further ground that from the statement made by counsel, it shows that these have to do with transactions between the dealers and with Procurement Officers. If my information is correct, and I believe it is, these Procurement Officers purchase by using one-half federal funds and one-half state funds, and as far as I know, there is no record that we have been able to find that under such circumstances the government is entitled to land grant rate on such shipments any way. I want to point out that that kind of evidence is not material or relevant to any of the charges that have been made against the defendants in this case.

As far as the statement by counsel that it comes within the statute, letters on file in a department from third parties which have nothing to do with the issues in this case do not, in my opinion, bring them under the ruling of that statute at all. The statute says that it must appear, "That the record was made as a memorandum or record of an act, transaction, occurrence, or event." Clearly letters between two departments of the government concerning which we have no part and we have no access to those files, do not come under that language.

2231 Mr. Wooden: I disagree and I contend that it does.

Mr. Leisure: The other element in the statute which is essential is that the record or memorandum must have been made in the regular course of business.

Mr. Wooden: That is obvious on the face of these papers.

Mr. Leisure: These are not records or memorandums, when you have correspondence between two departments of the Government, within the language of the Statute. I may say here for the purpose of the record that there is nothing new or novel about this Federal statute; we have had it in New York State for more than ten years, and it is the identical statute as to wording. It has gone to the Court of Appeals numerous times there, so that there is nothing new or novel about the language of this statute which has been quoted here so often.

As to the third element which must be necessary under that statute, it must have been "In the regular course of such business to have made a record or memorandum of such act at the time thereof or within a reasonable time thereafter". Clearly a series of correspondence if it is in some Government file does not by any stretch of the imagination come under that statute in any way, and the courts have so ruled repeatedly.

My associate just points out to me that in one of these letters in the file, which is not numbered, there
2232 is an unidentified man by the name of O. C. Stein writing to a freight agent in Centerville, Mississippi, and that is now being tendered here supposedly under this statute.

I submit that it does not come within the ruling of the statute as counsel has stated, and I further submit that under any rules of evidence it is not brought under the requirements of showing that it is material or relevant or competent to any of the issues in the case.

Mr. Wooden: The only issue that could be raised here, Your Honor, is that of competency. The papers on their face relate to the issues of the case; that makes them relevant. They are also of some importance or I would not be offering them, and that makes them material. I grant that the whole question is whether they are competent. Let us confine ourselves to whether they are competent.

Mr. Leisure: I say they are not material because it does not relate to any of the issues that we have been charged with, and I want to state further as my objection that these are typewritten letters, not even signed by the writer of the letters, and they are not even carbon copies. I know of no rules of evidence which would admit them.

2234 Mr. Wooden: Your Honor, before the ruling is finally made on the pending exhibits, I want to make one further observation regarding them.

This morning there was offered and received Exhibit 363-A, B and C. The offer was made largely at the suggestion of respondents' counsel and the exhibits were received without objection.

I should like to point out that so far as 363-A and B are concerned, they come within the same category as the exhibits now pending.

Mr. Leisure: I would like to point out that at the time the exhibit was offered, I made the suggestion that counsel offer the abstract and that we have an opportunity to photostat the rest of the file; that he take the file and offer A, B and C, C being the abstract and A and B being the letters.

It is true I did not object to their offer, but I do not think the letters are material in any way to the issues in the case. They are letters between the parties that have nothing to do with the case.

2235 Mr. Wooden: They are letters in the ordinary course of business between the State Procurement Officer in Alabama and one of his assistants, I believe.

(Discussion off the record.)

Examiner Norwood: Complainant may show, by proper evidence, that any of these respondents refused to ship on the order of their dealers on Government bills of lading and that in so doing they raised the question of Government ownership of property or raised other questions in circumstances where shipping on such bills of lading would interfere with price regularity and complainant may also show by proper evidence that any of the respondents did not refuse to ship on Government bills of lading in similar circumstances where such shipments did not affect price regularity, but the papers marked Commission's Exhibit 364-A to FF, for identification, are unauthenticated copies of official and business correspondence and are not such as can be fairly received at this time.

Mr. Wooden. I did not suppose the objection went to the fact that these were copies rather than originals.

Mr. Leisure: I am not entirely clear on Your Honor's statement as to the interference with price regularity. It is not my understanding that the respondents ob-
2236 jected on that ground. It is my understanding that price regularity was arrived at by the basing point system and I do not understand that statement.

Examiner Norwood: The complainant promised to show those things and they will have a right to do it.

2237 The witness identified Com. Ex. 364 G as a copy of a night letter from the State Procurement Officer at Jackson, Mississippi, addressed to him. He received the original of that telegram; Com. Ex. 364 H as a copy of a telegram from the Procurement Division Branch of Supply to the State Procurement Officer at Jackson, Mississippi. It is a reply to the other telegram. He said that he answered the telegram; Com. Ex. 364 AA as a copy of a letter, dated February 21, 1936, from the State Procurement Officer at Jackson Mississippi, addressed to him.

2238 It is an authentic copy of a letter that witness received in due course of mailing from the source indicated.

Mr. Wooden: Now, your Honor, as to these three particular papers, identified in this supplemental fashion by the witness, I think we have removed at any rate one ground of objection which I understand to be in your Honor's mind; namely, as to these being unauthenticated copies.

By Mr. Wooden:

Q. Now, further, Mr. Hayghe, as to the other papers here, where did the papers themselves come from?

A. They came from the State Procurement Officer.

Q. I mean—these are copies, you understand—where did the copies come from?

A. The copies came from the State Procurement Office in Jackson, Mississippi.

Q. They were not made in Washington?

A. No, sir.

Q. They were forwarded by the State Procurement Officer to your office, were they?

A. Yes, sir.

2241 The Witness: This was received from the State Procurement Officer with the rest of the papers as evidenced by the "Received" stamp of the Procurement Division on the back. That particular one was among the ones received from the State Procurement Officer.

2242 Q. Who is Mr. Eagle?

A. Special Assistant to the Assistant Director of Procurement.

Q. Here in the city?

A. Yes, sir.

2248 Q. Some reference has been made in your testimony to SPO bulletin. Will you state what that was?

A. SPO Bulletin 72?

Q. Yes.

A. That was a bulletin issued to all State Procurement Officers informing them that effective with the date of the bulletin, the practice of purchasing—

Mr. Zimmerman (interrupting): I object to stating what the bulletin contains. If the bulletin is here, let us look at it.

Examiner Norwood: He is simply describing it, I think.

Mr. Zimmerman: My objection goes to his statement of what the bulletin contains. He can state when it was issued and to whom, but without describing the contents.

Examiner Norwood: Yes.

The Witness: It was a bulletin issued to State Procurement Officers.

By Mr. Wooden:

2249 About when?

A. About February 6, 1936.

Q. Did it relate to this matter of substituting Government bills of lading for commercial?

A. It did.

Q. Did you encounter any objections from dealers to this manner of substituting Government bills of lading for commercial?

The Witness: To the best of my knowledge there was no objection encountered from dealers.

By Mr. Wooden:

Q. Did you encounter any objections from railroads to the substitution of Government bills of lading for commercial where the dealer was agreeable?

2251 The Witness: May I have the question repeated?

(The question is read.)

The Witness: We encountered general objections from the railroads regarding the substitution of government bills of lading for commercial in these circumstances.

By Mr. Wooden:

Q. What do you mean by "general objections?"

A. Their contention being, as a matter of actual fact, according to the terms of the contract, the material was not government property while in transit.

Q. Are you able to say whose property it was—whether the dealers' or the mills' or whose?

A. It depends on your contract. If it was an f. o. b. bid, it was the property of the bidder until it reached destination.

Q. You are not a lawyer?

A. No, sir.

Q. That is a legal question. Where you bought through the dealers was it the dealers' property or not? That is also a legal question.

A. Do you want my opinion on that?

Q. Sometimes a traffic man may have a helpful
2252 fact on the question of title.

A. In my opinion it was the property of the dealer until it reached destination if the contract was f. o. b. destination.

Q. Did you ever get a bid from a dealer located outside of the immediate territory in which the product—cement—was to be used?

A. There were many cases of that sort reported to us; yes, sir.

Q. In such cases were such outside dealers the low bidders.

A. Yes, sir.

Q. Were you able to get the cement from those
2253 low bidders in such circumstances?

The Witness: According to the record, the bidders in those circumstances were not able to secure the cement from the manufacturers in order to fill their order.

2256 Q. Now, Mr. Hayghe, will you give the reasons and sources of knowledge that underlie the answer you made?

A. In these particular instances?

Q. Yes.

A. The source of the information is records received from the various State Procurement Officers in response to request for general information on the subject.

2257 Q. Have you any cases in mind that you can describe?

A. I have a case in mind which just came to my knowledge this morning. To the best of my recollection, it was from the State Procurement Officer, I believe, in Idaho, where an award was made to a dealer and the dealer later was informed that the cement would not be supplied him

to fill the order because of the fact that project was located outside of his assigned territory.

Examiner Norwood: Was that communicated to you officially?

The Witness: Yes, sir.

2258 By Mr. Wooden:

Q. Mr. Hayghe, can you fix the time when the mills began declining to quote or sell direct to the W. P. A. Procurement Division?

A. I can not fix a definite time. It was not until just December 20, for instance, that they declined in the State of Florida. Up to December 20, 1937, we were receiving direct bids in Florida, but subsequent to that we did not.

Q. But that was the exception, as I understood it.

A. That was the exception, but there were other exceptions. I can only offer a guess that it was early in 1935.

Q. Do you know how the cement is billed when you buy it through dealers?

A. How it is billed?

Q. Who makes the billing? Who collects the 2259 money for the cement?

A. When we purchase through dealers?

Q. Yes.

A. The dealers.

Q. The dealer makes out the invoice?

A. Yes, sir.

Q. How is the freight handled if there is any freight?

A. In those cases, the Government is not interested in the freight at all. It is purchased delivered; in most cases there is no shipment at all and no freight charges so far as the Government is concerned.

Q. You mean you buy it locally from a dealer?

A. Buy it locally.

Q. In case the shipment is made from the mill to the project on the dealer's order, how is the payment of the freight handled?

A. In those cases the shipments move on commercial bill of lading and the freight charges are paid by the dealers.

Q. And where you buy direct from the mills, who pays the freight and to whom?

A. The Government pays the freight to the delivering carrier.

Q. To the carrier?
A. Yes.
Q. And how is it invoiced to you?
2260 A. By the carrier?
Q. No, by the mill.
A. The cement, you mean?
Q. Yes.
A. They bill on an ordinary invoice.
Q. Is it at the delivered price with your permission to deduct the freight?
A. It is at the Government cost at destination less the land grant rate.
Q. What has been your experience with reference to whether there is a difference or may be a difference between the land grant rate and when you make your calculations for the purposes of an award and the actual basis of settlement when you settle with the railroad?
A. It is identical. The Government cost at destination is subject to the deduction of the lowest rate and the payment of the transportation charge is likewise based upon the actual rate.
Q. You mean the total Government destination cost is identical?
2261 The Witness: The destination price to the Government is a price that we do not know how it is made up. The only thing we know is it is offered with the provision that the lowest rate available to the Government will be deducted from it. The balance is the measure of payment to the mill.

By Mr. Wooden:

Q. My question was what has been your experience with reference to whether or not the land grant rate that you use in calculating the basis of the award, whether or not it differs or may differ from the actual land grant rate which the railroads receive when the shipment is made.
The Witness: It would be the same.

By Mr. Wooden:

Q. Well, I am satisfied of course that you either misunderstand me or I misunderstand you.
2262 Q. Are you familiar with the Comptroller General's opinion on that subject that relates to the differences that may occur and frequently do occur between

the rate which forms the basis of the settlement with the railroad and the rate which is estimated in advance?

A. I am.

Q. With that in view, do you care to make any further explanation of your previous answers, or do you want

2263 them to remain as they were?

A. I think my answer requires an explanation.

The Witness: With regard to the Comptroller General's decision, I think the number is A-97400 and it so happens that that opinion was rendered in response to a case which was prepared by myself, so I know what his answer was. With regard to my answer, I said the land grant rate used in evaluating the bid is the same as the land grant rate used in the settlement. In theory, that is true. There may be some error in computation which afterwards may change the rate. In theory, my answer is yes, it is correct.

2264 By Mr. Wooden:

Q. But in practice it does not always work out that way?

A. In practice, due to errors in computation, there may be a slight difference in the land grant rate eventually determined to be the proper one.

Q. Is that in part due to differences over the divisions of the rates between land grant and non-land grant roads in such matters?

A. Frequent differences of opinion, yes, sir.

2265 By Mr. Wooden:

Q. Mr. Hayghe, did you have some experience in the General Accounting Office before you came into your present position?

A. No, sir.

Q. Did you have any experience in any office relating to claims filed by railroads?

A. In the Finance Office in the War Department.

Q. In that capacity, did you find railroads filing claims from time to time about errors in the calculation of land grant rates?

A. Frequently.

Q. Does your experience in that connection have anything to do with the answer you made a moment ago about the difference between the theoretical and actual application of land grant rate factors?

A. Yes, sir; it did and I would like to elaborate just a little more in my answer to that question if you will permit.

Examiner Norwood: Go ahead.

The Witness: It is an actual matter of fact that until after all the facts in transportation are known, it cannot be definitely stated what the rate on a particular shipment is going to be. There are probably too many factors there to be drawn out here.

But, for instance, at the time of the computation
2266 of a land grant rate, there may be a certain basis for dividing in the event of a joint rate—that is, the rate applying by a route of more than one carrier. Between that time and the time the shipment moves, there may be a change in divisions. There may be a correction of that land grant percentage applying between two of the points involved in the movement.

Even after all the facts are known between a given point of origin and a given point of destination, you may have as many as a dozen or more different bases for dividing your through rate and as a matter of actual fact—this has not been put to an actual test but I would be willing to do so—you might give the same problem of the rate to a half dozen equally qualified rate men and get half a dozen different answers because all might not work out the rate on the same basis as the others.

By Mr. Wooden:

Q. So, if the purpose of the control clause be to provide for the deduction of the actual land grant rate, in effect, provides for something that is impossible, I take it, based on your statement just made?

2267 The witness identified 365 A to V as a pamphlet prepared by the traffic section of the Procurement Division under his direction. It is a compilation of facts pertaining to land grant equalization agreements—a computation of net land grant rates. It contains a photographic copy of land grant map published by the Quartermaster General, dated April 1, 1937.

Mr. Wooden: I offer that for the record, your Honor. I think it contains helpful information and is an official document.

Examiner Norwood: That is A to V, inclusive?

Mr. Wooden: Yes, sir.

Mr. Leisure: May I ask a question?
Examiner Norwood: Yes.

By Mr. Leisure:

Q. Is this for general distribution in the different
2268 government departments?

A. Yes, sir.

Q. And among the railroads?

A. The railroad companies; yes, sir.

Q. Is it available to any one who wants it?

A. No sir; it was prepared wholly within the Procurement Division. It is not in print, technically. It is reproduced.

Q. It is for use by the railroads and the departments of the government interested?

xA. Yes, sir; in an effort to standardize procedure.

(COM. EX. 365-A to V was offered and received in evidence.)

By Mr. Paulson:

Q. Mr. Hayghe, I think you said you found, through your experience as a traffic manager, that the cement manufacturers refused to bid direct except in one or two or three instances?

2269 A. That is right.

Q. And you also testified that the pursuit of that policy has the effect of depriving the government of the opportunity of shipping on bills of lading? Is that correct?

A. That is true.

Q. Did any method occur to you by which you could get the benefit of the land grant rates and still let the business pass through the hands of the dealers?

A. Yes, we had this proposal under consideration at one time: As an inducement to the manufacturers to bid direct, we were to permit them to add to their bids an amount sufficient to meet the dealers' commission if they saw fit to retain the dealers' interest in the bidding. I think there would be no objection to that whatever.

Q. In other words, there is a method by which they could let the dealers receive their commission and still grant the government the privilege of shipping in government bills of lading?

A. Surely. The manufacturers would be permitted to bid any figure he saw fit. We would not inquire as to the

factors that entered into his bid, and he could include an amount sufficient to meet the dealers' commission.

Q. Is that the situation that would have obtained had you been able to substitute government bills of lading for commercial bills of lading?

2270 A. It could have been. Repeat that question again, please?

(The question is read.)

The Witness: I think that would have been largely up to the manufacturers themselves.

By Mr. Paulson:

Q. Presumably the manufacturers refused to bid direct in order to protect the dealers?

A. That was the attitude expressed.

Q. Do you know whether or not that was the reason?

A. Only from information received by us from various sources to that effect.

Q. It was dealers' business, in other words?

A. To protect the dealer is the statement that is made in numerous instances.

Q. But there is a method by which they could still protect the dealers and yet give you the benefit of the land grant rates and they refused to cooperate with you?

A. I did not say we actually made the proposal. We had that thing under consideration at one time. We did not actually make the proposal.

Q. But as an expert in the matter of freight rates and land grant rates, you see that that proposal is feasible?

A. I think it is entirely feasible; yet, sir.

Q. Did any of your State Procurement officers concur with you in that idea? Was it ever advanced by a

2271 State Procurement officer? Let me state my question this way: Did any of your State Procurement officers ever propose to the head office here in Washington that such a method of procedure was feasible; namely, that you could let the dealers get the commission and still let the government get the benefit of the land grant rates?

A. To the best of my recollection no State Procurement officer ever made the proposal. It was a proposal developed within the office here.

Q. So far as the State Procurement officers went in that regard, it was that they wanted to substitute government for commercial bills of lading?

A. That is as far as they went.

2272 *Cross-Examination by Mr. Leisure.*

Q. Mr. Hayghe, on direct examination you mentioned several times the State Procurement Officers. For the purpose of the record, will you just explain that term? What is a State Procurement Officer?

A. A State Procurement Officer is a representative of the Procurement Division in the respective states.

Q. He is a federal employee and not a state employee?

A. He is a federal employe, yes.

Q. You also mentioned both W. P. A. and P. W. A. The majority of your testimony has had reference to projects that were carried on by W. P. A., isn't that so?

A. That is true.

Q. And for the purpose of the record, broadly speaking, W. P. A. usually deals with smaller projects, does it not? In other words, will you just explain the difference between the two? Give them their full name, please.

A. The Works Progress Administration is W. P. A., and the Public Works Administration is P. W. A.

Q. What is the difference as you understand it? I notice you use both of those terms.

A. The Public Works Administration as I have learned to consider it, is one that does not deal so much in the purchase of commodities as in the development of
2273 works to contractors who perform all of the work, purchase the material, and deliver it on the job.

Q. Providing labor, is that so, in different sections of the country?

A. All of this is rather vague in my mind. Frankly, I don't know just where it begins and where it stops. But the Works Progress Administration actually makes the purchase of material from government funds.

Q. Through the Procurement Division?

A. Through the Procurement Division.

Q. That is not so at all as to the P. W. A.?

A. P. W. A. never deal through the Procurement Division in any way.

Q. And that is usually a large project such as the Boulder Dam?

A. Yes.

Q. Do you know of any instance wherein the P. W. A. there was this problem of joint financing?

A. I don't know of any instance.

Q. But that is fairly usual in W. P. A. projects in the separate states, isn't that so?

A. I could not say to what extent that exists, but I understand there are some projects where there is a joint interest.

Q. Since the payments are made out of your de-
2274 partment, who in your department would know about that?

A. Well, I think our chief of Finance Division, Mr. Queenan, would be best qualified to answer that.

Q. And he would know, would he, how these divisions are made up, as to what part the state pays, and what part the federal government pays on these projects?

A. I think it is probable he would, yes.

Q. You do not know, at any rate?

A. I do not know.

Q. You stated that these Procurement Officers issue invitations to bid. Do they make all of their purchases through the issue of invitations to bid in these small projects over the country?

A. I believe there is open market purchases to some extent.

Q. That is, they purchase from contractors at certain places, and they also purchase from dealers at certain places, is that so?

A. I think that is generally true.

Q. In fact, there is a statute which allows them to do that, is there not?

A. I think there is.

Q. The dealers and contractors sometimes bid on these smaller jobs without there being any bids direct from mills, isn't that so?

A. You are speaking principally of cement?

2275 Q. I am talking only of cement.

A. That is true. There have been many instances where bids have only been received from dealers in those cases.

Q. Since you asked that question about only cement, what are the other products that you purchase through the Procurement Division? Will you give us a few of them?

A. It is pretty hard to do. Automobiles, lumber, sand and gravel,—almost every commodity that you could mention.

Q. Anything that may be necessary in these projects

that you are carrying on in the various states, isn't that true?

A. That is true.

Q. What have you to say as to the majority of these purchases; are the majority of them made through the local contractors and the local dealers?

A. You are referring to cement now?

Q. Yes.

A. Yes, sir.

Q. In some cases, such as you have been testifying to here, in some cases you attempted to purchase direct from the mill, is that correct?

A. Well, I think in every case an attempt is made to purchase direct from mills because the mills as well as the dealers are mailed the invitations to bid.

Q. That is, you wanted to buy directly rather than through a dealer if you could?

2276 A. Well, our object is to secure as much competition as possible in order to place the contract—

Q. (Interrupting.) Is your object to secure as much petition as possible or is your ultimate object to get the goods as cheaply as you can get them?

A. I was going to finish up and say in order to obtain the lowest prices possible.

Q. So you attempt sometimes to buy direct from the wholesaler rather than buying from the dealer in order to get it cheaper? Is that a fair statement?

A. If it is possible to obtain it cheaper in that way, yes, sir.

Q. When I say "wholesaler," I of course have reference here to the mill, to the manufacturer.

A. That is true.

Q. Now, in doing that, you would necessarily leave out the local dealer, would you not? If you got the goods direct?

A. If we bought from a mill, we would disregard the local dealer?

Q. Yes.

A. If the mill price were made lower, we would, yes.

Q. Would you in that event, in your opinion or would you not help the local situation as to labor if you left out the local dealer and purchased direct?

2277 Q. I say, Mr. Hayghe, purchasing direct would leave out the dealer?

A. I guess so, yes.

Q. And one of the purposes of W.P.A. was to give additional employment?

A. That was one of the purposes, yes.

2279 Q. Now, I believe you said as to land grant freight rates, Mr. Hayghe, that your present duties included computation of land grant rates for the use of government establishments?

A. That is true.

Q. So you are one of the government experts—or first, let me ask you this. You are an expert in that field?

A. I do not claim that, no, sir.

2280 Q. How many experts has the government to compute these rates?

A. We have a group of approximately 45 rate men, all of whom are considered experts in that field. I am just one of them.

Q. And when the government figures the rates, I think we had here the other day that when they figured the rates they were final? There is no appeal after they have figured the rates?

A. Oh, yes. The railroad may appeal to the Comptroller General for the review of the rate used in settlement.

Q. And does it usually on these amounts of a few hundred dollars? Do they usually appeal those?

A. As a rule they do not.

Q. As a rule they do not?

A. No.

Q. So that realistically, the way the government figures is final, isn't that true, Mr. Hayghe?

A. It works out in practice that way in most cases, I should say.

Q. Now, this morning Mr. Wooden gave you the Groveland, Florida bid of November 23, 1936. I think the exhibit number is 334-B and C for 300 barrels 114,000 pounds. Have you got that, Mr. Wooden?

(The paper is produced.)

2281 By Mr. Leisure:

Q. Will you look at that exhibit, Mr. Hayghe. That shows total destination cost to the government as $754.50, is that correct?

A. $756.00.

Q. $756.00 in making the award, is that right?

A. Yes.

Q. But it also shows a total destination cost there in the sum of $754.50, doesn't it?

A. Under alternate bid No. 2, it shows $754.50.

Q. I just want for the record to be clear as to how the government arrived in giving that bid to the higher amount. Can you explain that?

A. No, sir, I am afraid I cannot.

Q. You don't know how that happened in that case?

A. I have not the slightest idea.

Q. Now, I want to ask another question about the same exhibit for the record. 334-C. Have you got that?

A. Yes.

2282 Q. I notice there it says supplying direct from Leeds, Alabama, and Clinchfield, Alabama. It is $200.64 from both of those points.

A. That is not identified on this sheet. It shows Government freight under the various Government bidders' names. Which bidder is shipping from Clinchfield?

Q. Clinchfield is the third from the last column on the right.

A. It shows a Government freight of $200.64.

Q. Yes.

A. That is the Penn-Dixie Cement Corporation?

Q. Yes. Now you will observe on Exhibit 334-A—do you have that there?

A. Yes.

Q. Now, you observe there that the land grant rates are given at a higher rate from the same points. Which is correct in those two Government exhibits?

A. These figures on 334-C presumably were entered by the Procurement Officer in Florida.

Q. Yes.

A. I do not know upon what he bases that cost. On 334-A are the rates computed by our own office here.

Q. Which rate would be used—the one which appears on the abstract here or the one that you computed finally?

A. To the best of my knowledge none of the rates

2283 were used because—you mean in the payment of the account?

Q. No, I mean in the making of the award.

A. Neither one because the award was made by drawing.

Q. Would not the rate used on the abstract be the one that was used for determining the award?

A. I believe not because, as I say, it was awarded by lot. It was presumed to be identical bids and there was no evaluation as far as freight rates were concerned.

Q. In determining whether they were identical, which figure would be used?

A. On the abstract.

Q. That figure which showed them to be identical—was that, in your opinion, a correct or incorrect figure based on your computations later in your own office?

A. I would have to work out the computation from here (indicating) because this is stated as a total amount for the total quantity—the freight charged—and this (indicating) is stated in cents per pound. I would have to compute that. I am afraid I still do not have sufficient information. This does not show what weight per barrel he considered here. I know the number of barrels, but I do not know the weight of the barrels used by the State Procurement Officer.

Q. We have two exhibits offered in evidence, both offered by the Government. One exhibit carries one rate; the other exhibit carries another rate. I am trying
2284 to determine which exhibit was used for figuring the prices as being identical.

A. Well, the figures that were used in connection with the award of the contract would be shown on the abstract.

Q. And when it got to the Procurement Offices here, it was figured differently. You got a different result, at least?

A. I would not say that, because the figure shows here the amount of the freight charge in the aggregate.

Q. If you did not say that, I presume we would have to figure that out. I am suggesting to you, however, that the results are different.

A. You are still speaking of the Clinchfield, Georgia, case?

Q. Clinchfield and Leeds.

A. You can tell me the weight of a barrel of cement, probably.

Q. 380 pounds.

A. There appears to be a difference of approximately $11 between the rate used in reaching this total amount of the Government transportation charges and the land grant rate as checked in the office here in Washington.

Q. But the award would be made on the abstract number?

A. The award would be based on figures contained in the abstract.

Q. Now, will you take another exhibit—Government Exhibit 334-C—and will you also look there from
2285 Boyles, Alabama, at the $164.16 which is on 300 barrels?

A. Is that the Lehigh Portland?

Q. Yes, 300 barrels, and it is .5472 per barrel. Do you find that there?

A. Lehigh Portland shows Government freight as $164.16.

Q. .5472 per barrel? Is that right?

A. I think that does not appear on here—on 334-C.

Q. That would be the answer if you divided by 300 barrels. Take the next one in price—334-A. Look at that.

A. 334-A?

Q. Yes.

A. From Leeds—from Boyles, Alabama?

Q. Yes.

A. Based upon the land grant rate?

Q. Yes.

A. We find the freight charge is .632206 per barrel.

Q. That again shows a difference on the two Government exhibits from the same shipping point. Which one of those would be used? First, let me ask you which one is correct?

A. I could not answer that.

Q. You would not know that?

A. No, sir.

Q. Which one would be used in figuring that the bids were identical?

A. I simply repeat that the figures shown on the abstract would be the ones used in awarding the contract in every case.

2286 Q. Now, those are two different instances. Looking at the entire exhibit, Mr. Hayghe, if you multiply 300 barrels by 380, that will give you 114,000 pounds for the car, and if you multiply the 114,000 pounds by the land grant rate which is listed there—do you see the land grant rates which are listed?

A. Yes.

Q. Starting at Tampa, it gives .13375 per hundred pounds?

A. Yes, sir.

Q. That gives a freight rate of $152.76?
A. You mean the charge on the 114,000 pounds?
Q. Is not that what it shows there?
A. On here?
Q. $152.76 from Tampa?
A. On which one?
Q. C.
A. The Florida Portland Cement Company shows a commercial freight of $152.76. There is no land grant involved there, of course.
Q. If you take the land grant that is used there on 334-C of 1.3375—
A. (Interposing) That is not the land grant rate; that is the commercial rate. It is simply shown in that net column for convenience; but you will notice it is the same as the figure shown for the commercial.
2287 Q. If happens to be the same in that case. Take the next one. Is that the same one at Boyles?
A. The land grant is .16637.
Q. And that gives a price of $164.16, which is listed on 334-C?
A. That would not necessarily be based on these figures here. From Boyles, based on that commercial freight rate of .16637—
Q. (Interposing) I am speaking of the land grant?
A. I am speaking of that—pardon me.
Q. Is it not listed as $164.16?
A. Yes, sir.
Q. Look at Exhibit C in the fourth column from the right, Mr. Hayghe, and you will see it.
A. That is $164.16. That is shown as the government freight.
Q. That is right. That is the way it was figured there, was it not?
A. On the abstract, yes.
Q. Now, taking the land grant rate, which is listed there of .16637, is that or is that not a correct rate?
A. It is a correct rate according to the computation of my office.
Q. But if you figure it now by taking, as I have suggested, 114,000 pounds and multiplying that by the land grant rate, do you get $164.16?
A. Based upon the rate computed by our office, 2288 the total cost of the land rate in $189.66.

Q. That is correct. Then the figure of $164.16 would not be correct, would it, Mr. Hayghe?

A. Assuming this is correct, the other one would not be.

Q. I am assuming you figured it out correctly by using the land grant rate as specified in your exhibit.

A. May I inject this? I do not know what elements went into the computation of these figures in red on Exhibit 334-C. They were not made by me or my office. Those were figures placed by the State Procurement office.

Q. What figures could go into the computation in red? You say you do not know what figures went into it?

A. I do not know what weight per barrel was used in arriving at the total weight or what rates were used. I cannot testify as to that.

2289 Washington, D. C.,
Wednesday, January 19, 1938.

2290 MAJOR HERMAN FELDMAN, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

2291 *Direct Examination by Mr. Paulson.*

I am stationed at Washington, D. C., in charge of the procurement procedure or supervision of such procedure of the Quartermaster General's Office and in that connection I have supervision over purchases of material for the Quartermaster Corps of the Army. We purchase all supplies, clothing, equipage, building materials of various sorts and description, everything that the Army uses pertinent to the Quartermaster Corps, including cement.

2292 Q. About how many barrels of cement does the Quartermasters Corps of the Army purchase a year?

A. Approximately 350 to 400 thousand barrels.

Q. Have you experienced any difficulties in the purchase of cement from the standpoint of securing competitive bids?

A. Yes, sir.

2293 The Witness: We have experienced some difficulty in obtaining competitive bids.

By Mr. Paulson:

Q. What do you mean? Will you explain your answer? You mean you have not received competitive bids?

A. We have not received competitive bids—

2295 Q. By that answer, Major Feldman, did you mean that you received identical bids?

A. Our official reports from the field and our abstracts of purchases and reports indicate that the prices are equal. These are official reports.

Q. The law requires the purchasing officers of the United States Government to advertise for competitive bids, does it not?

A. It does.

2298 Q. Major Feldman, is it the practice of the Quartermaster Corps to request the bids both f. o. b. destination and f. o. b. shipping point in your purchases of cement?

A. It is.

Q. Have you been successful in getting bids f. o. b. shipping point?

A. We have not.

The witness identified Com. Ex. 366 A as an 2299 abstract of bids submitted to "our" office by the Quartermaster on duty at Fort Riley, Kansas, abstracting the bids, the various invitations received on 4,000 barrels of cement, dated May 22, 1937; Com. Ex. 366 B to L as an invitation to bid which pertains to this particular abstract of May 22, 1937, covering 4,000 barrels of cement listed and shown in the abstract of bids that he just referred to. The date of the opening is May 22, 1937. The invitation was issued on May 13, 1937; Com. Ex. 366 M and N as a telegram from the Quartermaster on duty, 2300 who is the purchasing officer at Fort Riley, Kansas, to the Quartermaster General regarding this particular abstract and reporting the fact that no bids 2301 were received quoting f.o.b. point of origin; Com. Ex. 366 O as a report from the same purchasing officer at Fort Riley, confirming the instructions the purchasing officer had received in connection with this particular circular.

2302 Examiner Norwood: I will overrule the objection and receive the exhibit as marked, with the understanding that the conclusions contained in 366-M and N and 366-A will be considered as not received in the case.

Mr. Paulson: That is perfectly all right, Your Honor. We are not asking for the conclusions.

Examiner Norwood: That will apply also to other exhibits which have gone before containing conclusions.

2308 Q. Major Feldman, you stated that this was the invitation for bids bids on a certain number of barrels of cement you needed. Does that invitation call for bids f. o. b. destination and f. o. b. shipping point?

309 (COM. EX. 366-A to L inclusive was offered and received in evidence.)

The Witness: It does, very definitely.

By Mr. Paulson:

Q. Can you tell by looking at this abstract whether or not you received bids according to that invitation. In other words, did you receive a straight f. o. b. destination and also an f. o. b. shipping point bid?

A. We received f. o. b. destination only and no f. o. b. shipping point bid.

Q. Did you receive more than one f. o. b. destination price?

A. We received a number. There is a total of eleven bids contained on this abstract, all of which indicate—

Q. (Interposing): I did not state my question clearly. Did you receive two destination prices from any one company?

A. (Examining paper)

2310 Q. Let us take the companies individually. What is the first company on the abstract?

A. The Monarch Cement Company, Humboldt, Kansas, indicates a bid Fort Riley, $2.34 and a destination price of $2.15.

Q. Is not Fort Riley the destination point?

A. That is right.

Q. Then the $2.34 would be the Fort Riley price?

A. The Fort Riley price, yes.

Q. What is that other price of $2.15?

A. That is the price offered from which we may deduct the lowest applicable rate according to the control clause indicated by the firm bidding, the Monarch Cement Company. It does not indicate a bid f. o. b. shipping point which was requested in our invitation.

Q. The next company? What is the situation there and what is the destination price bid?

A. The destination $2.15 of the Dewey Portland Cement Company. Similarly bidder No. 3, the Ash Grove, fourth, the Consolidated—all destination bids of $2.15. The Moses Lumber Company, Junction City, Fort Riley delivery of $2.34; the Rock Island Lumber Company, Fort Riley, $2.44; the Lone Star Cement Corporation, Fort Riley, $2.34, and the Nebraska Cement Company a destination bid of $2.15; the Universal gave us the alternate again at Fort Riley,
$2.34, destination $2.15; the Missouri Portland Ce-
2311 ment Company destination point $2.15; the Lehigh
Portland Cement Company, Fort Riley, $2.34, $2.15 destination.

Q. Now, let us see if we can make it just a little bit clearer there by summarizing the f.o.b. Fort Riley destination prices, in other words the true f. o. b. destination prices. Was there any discrepancy or did they all bid the same price at Fort Riley?

A. At Fort Riley, with the exception of the Rock Island Junction which bid $2.44 Fort Riley, the other bidders who bid Fort Riley all bid alike, $2.34.

Q. Who is that one bidder who bid $2.44?

A. The Rock Island Lumber Company, Junction City.

Q. Do you know whether that is a dealer or a manufacturer?

A. I could not say offhand, but the name of the firm would indicate that it was a dealer.

Q. And all the cement companies bid $2.34?

A. That is right.

Q. And under the alternate proposal, they all bid what?

A. Destination of $2.15.

Q. I hand you Commission's exhibit marked for identification 367, and ask you to state what that is?

A. This is a circular letter that was issued at the direction of the Quartermaster General, initiated in my office, which incorporates a requirement in our invitation as a
result of what we considered our inability to ob-
2312 tain bids f. o. b. shipping point.

Q. What is the date of that?

A. The date of this is April 29, 1937.

Mr. Paulson: I offer in evidence exhibit marked for identification No. 367.

2313 Mr. Leisure: May I ask the witness a question?

Examiner Norwood: Certainly.

By Mr. Leisure:

Q. This 367, Major Feldman, seems to be one of the usual Army regulation circulars that are sent out to men in the service?

A. Yes, sir; that is correct.

Q. This one—367—was it sent to any of the respondents in this case?

A. No, sir, it was not, but the subject matter was incorporated, however, in all of our invitations.

Mr. Leisure: Your Honor, I have some objection to this exhibit. It is a circular used by the Government among its own departments. There is no evidence that it was called to the attention of any of the respondents.

Mr. Paulson: It is included in the invitation to bid. It is only for a basis of questioning.

(COM. EX. 367 was offered and received in evidence.)

By Mr. Paulson:

Q. What occasioned the issuance of this circular letter?

2314 A. The reports from our purchasing officers in the field indicated very clearly at least in so far as our office was concerned, that we were unable to receive anything except what we like to term in our office, non-competitive bids; in other words, the bids were identical and we were not receiving responsive bids to our invitations. Each of the invitations received had attached to it a rider from the various cement plants. As a result of this, this circular went out.

Q. What change did they make in your invitation?

A. We indicated in our invitation that we desired the firm to bid f. o. b. shipping point as well as f. o. b. destination, and in the absence of which we would not consider any qualified bid.

Q. In that category of qualified, do you include bids containing a control clause?

A. That is correct.

Q. In other words, you issued this instruction to your field representatives so that you would advise the cement manufacturers that bids containing a control clause would be irregular?

A. That they would not be considered.

Q. What was your thought in that matter?

A. Hoping to receive both the f. o. b. shipping point as well as the f. o. b. destination prices in order to arrive at the lowest net cost of this cement to the Government.

2315 Q. Then, is this abstract an abstract of bids upon a letting which was made subsequent to that circular?

A. That is correct.

Q. In other words, this invitation contains that stipulation, does it?

A. That is correct.

Q. What do you do in a situation like this, where the cement companies refuse to conform to specifications?

A. We did just what this order stated; we disregarded the bids and directed the purchasing officer in the field to purchase in the open market if the prices were advantageous.

Q. What is the procedure when you purchase in the open market?

A. The purchasing officer contacts as many firms as it is convenient for him to contact and, based on the quotations received—

Q. How does he contact them?

A. Depending upon the distance from the purchasing office, it may be personal, by telephone, or by informal letter.

Q. When that circular was issued, Major Feldman, did you receive any visits from cement manufacturers or their representatives?

A. Not personally; no. The purchasing officer, however, did contact a number of dealers—

Q. Did you receive in your Washington office
2316 visits from the manufacturers or their representatives?

A. There was a representative—I do not know how many now—but there was a representative of the cement manufacturers who visited the Quartermaster General's Office in connection with this particular—

2317 Q. Major Feldman, do I understand you to state that no representative of a cement manufacturing company contacted you in your office here in Washington or otherwise after the issuance of that circular?

A. That is correct.

Q. And were you present or do you know of any contacts through your own information?

A. Yes; I know definitely there was a representative in the office who spoke with the executive officer, Colonel Harding, who is now out of town, but will be back next month.

Q. Do you know who that representative was?

A. I do not, unless it is a matter of record.

Q. Getting back to the purchase in the open market, do you know whether the district officer contacted any one of these 11 bidders on the letting out there at Fort Riley that we have been discussing?

The Witness: I do not know whether he contacted all 11.

By Mr. Paulson:

2318 Q. Did he meet with any success? Did he get any offers from the cement companies?

Mr. Zimmerman: I object to that.

Examiner Norwood: Answer as to your own knowledge. Objection overruled.

The Witness: The official reports indicate that we did obtain bids from certain firms.

By Mr. Paulson:

Q. What kind of bids?—f. o. b. shipping point?

A. f. o. b. shipping point, yes, sir.

2319 Q. I should like to read for the record a portion of this telegram 336-M and N.

Examiner Norwood: Leave out those conclusions.

Mr. Paulson: "Reference telephone conversation with General Warfield on May twenty second regarding bids on cement STOP No bids were received quoting fob point of origin on invitation number seven thirty five dash thirty seven dash seven five for four thousand barrels cement urgently needed at this station STOP Bidders quoted a price fob Fort Riley of two dollars thirty four cents per barrel and some quoted two dollars fifteen cents per barrel destination cost moving on a government bill of lading STOP The fob price Fort Riley would be an increase in cost of seven hundred and sixty dollars over a price 2320 at mill and moving on government bill of lading STOP Conference with representatives of cement companies indicate that they are forbidden to bid fob point of origin STOP This is second time this item was advertised and same result was obtained on advertisement for three thousand barrels on circular number seven three five dash three seven dash sixty STOP. Don't believe this result would be altered by further advertisement STOP Have contacted sales manager of Consolidated Cement Corporation who is willing to sell cement at price of one

point seven six naught one per barrel fob Fredonia STOP This will net the government two dollars fifteen cents at Fort Riley STOP Sales manager states he cannot submit bid of this amount for public opening of bids but is willing to make this price as a private transaction STOP Recommend that all bids be rejected under circular seventy five and that the four thousand barrels of cement be bought from Consolidated Cement Corporation under provisions of paragraph four H AR five dash two four naught parenthesis unsatisfactory bids STOP Early reply requested as no cement on hand and present needs of post is two hundred barrels per day STOP V dash one four four.

"Redner."

2321 Mr. Leisure: Your Honor, at this time I wish to make a motion to have this telegram 366-M stricken from the record. The reading of it by counsel shows clearly the really vicious character of this kind of evidence in this case. I noticed the witness smiles, but I would like to make clear what I have in mind. Here is a man somewhere in Kansas who is talking about a conference which he had with certain cement people. Were he here, we would be able to cross-examine him and ask him who was present at the conference and what he said and what they said, but with this telegram going in in this way, we are foreclosed. We are not even able or allowed, if I may, to offer any defense. He also draws the conclusion that the cement companies are forbidden to do certain things. Forbidden by whom? Forbidden by the industry? If forbidden by the industry, then it is unlawful. If forbidden by his own company, it is entirely legal. When he is not here, we have no opportunity to bring out what he means when he says, "forbidden."

It seems to me that with 75 respondents in this case being bound by this kind of evidence, that it really is going too far even under what your Honor has termed in your book as "fair rules of evidence," if we do not adhere strictly to the rules which have been by trial and
2322 error method found to be the best way to conduct trials over several hundred years.

Examiner Norwood: I have already excluded this part that you are talking about. This indicates that they are forbidden, and that is already out. This is received here for the factual statements contained therein. Motion denied.

Q. Do some of the forts or other divisions of your department happen to be located at such places in the United States as to make it possible for you to ship goods including cement to them on government bills of lading?

2323 A. Yes, they are.

Q. In other words, the advantage left with the government accrues to you in some instances—by that I mean the land grant rate advantage accrues to you in some instances?

A. That is correct.

Q. Is that true at Fort Leavenworth, do you know? Do you know whether at Fort Leavenworth there are some land grant roads running into the territory there?

A. There are.

Q. Do you make it your business to try to take advantage of land grant rates and route shipments over the land grant routes where possible?

A. We are required to.

Q. Do you consider it necessary in the purchase of cement to get a bid f. o. b. shipping point in order to

2324 take advantages of the land grant rates?

A. Yes, sir, we do. That is the reason for our requirement in our invitations.

2325 WENDELL HOLMES, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Paulson.

I am legal advisor on procurement, Office of the Quartermaster General, and in that connection all instances of bidding on cement purchases for the past six months

2326 at Forts Riley and Leavenworth have come to my attention.

The witness identified Com. Ex. 368 A as a certified copy of abstract of all bids received in response to the invitation No. 483-37-76 by the Quartermaster at Fort Leavenworth, opened on April 17, 1937; Com. Ex. 368 C to G as a copy of the invitation for bids, dated April 7, 1937, issued by Quartermaster, Fort Leavenworth. The two groups of exhibits "—368 A and 368 C to G" are related. "C to G" is the invitation for bids issued and "A" is the abstract of bids received in response to this invitation.

Q. Does the invitation call for bids f. o. b. destination and f. o. b. shipping point?

A. Yes, sir.

Q. Did you receive bids f. o. b. destination?

A. F. o. b. destination?

Q. Yes.

A. Yes, sir.

Q. How many companies submitted bids f. o. b. destination?

Mr. Leisure: That has not been offered yet.

2327 Mr. Paulson: I am sorry. I offer this Exhibit 368-A to G, inclusive.

(Discussion off the record.)

By Mr. Paulson:

Q. Can you tell from the invitation whether it calls for bids f. o. b.—

A. It asks for bids both ways.

Examiner Norwood: Received as marked.

(COM. EX. 368-A to G, inclusive, was offered and received in evidence.)

Q. How many companies bid f. o. b. destination?

A. Seven companies.

Q. What was the destination?

A. The destination was Fort Leavenworth, Kansas.

Q. What companies bid and what did they bid f. o. b. destination?

A. All companies bid $2.15 a barrel f. o. b. Fort Leavenworth. The companies were the Consolidated Cement Corporation, Dewey Portland Cement Corporation, the Ash Grove Lime & Cement Company, the Lehigh Portland Cement Company, Lone Star Cement Corporation and A. M. Geiger Cement Company.

I would like to change my testimony. A. M. Geiger bid $2.25 a barrel.

2328 Q. Do you know whether A. M. Geiger is a cement company?

A. I happen to know personally he is a local dealer.

Q. Did you receive bids f. o. b. shipping point?

A. No, sir.

Q. Did you receive bids from each of these same companies upon another destination basis?

A. All except Geiger Cement Company submitted a so-called destination cost bid of $2.14 a barrel.

Q. Do you happen to know, Mr. Holmes, whether or not any of these plants or manufacturers bidding on this letting have plants situated so as to make available to you the use of land grant rates—

A. Yes, the Lehigh Company.

Q. —if they had bid you a price f. o. b. shipping point?

A. Yes, the Lehigh Company, with a plant at Iola, Kansas, can move cement over roads that give the Government a lower rate.

Q. Do you know what the commercial rate from Iola to Fort Leavenworth is?

A. 11.5 cents a hundred.

Q. Do you know what the Government land grant rate is?

A. I would have to have my memory refreshed on that. It is considerably less.

Q. This document may refresh your memory on that.

A. The net Government rate from Fort Leaven-
2329 worth to Iola is .09135 per hundred.

Q. In barrels, what is that?

A. That is .34713 per barrel.

Q. As against how much for the commercial rate per barrel?

A. As against 43.7 cents per barrel.

Q. Will you state again what that company bid respectively f. o. b. destination and f. o. b. Government destination?

A. The company bid $2.15 a barrel f. o. b. Leavenworth, which would necessitate the cement moving on commercial bill of lading.

Q. Had you been able to ship on Government bill of lading on that shipment, you would have had to pay how much freight?

A. We can not ship on a Government bill of lading on that bid because it was f. o. b. destination.

Q. Did the f. o. b. destination price which they bid you reflect the Government land grant rate?

A. No. We necessarily had to take into consideration the commercial rate because the cement company would have to move it on a commercial bill of lading.

2330 Q. The f. o. b. destination price at Fort Leavenworth, I understood you to say, was $2.15?

A. That is right.

Q. Will you explain that other bid? What do you interpret that other bid to mean, the bid of $2.14?

2331 A That was a bid, so-called government destination bid. From that price of $2.14, the government deducts the lowest rate available, the lowest net rate available, for the purpose of determining the invoice price. Since there was a lower government rate available, they necessarily deduct that rate, which was 9 cents and a fraction.

Q. Are land grant rates available to the commercial world, do you know?

A. No, sir.

Q. Then the commercial world would have had to pay $2.15 per barrel, and the government would have had to pay $2.15 per barrel if it had not been able to use land grant rates, is that right?

A. That is right.

Q. If you deduct the commercial rate from $2.15, what do you get for the mill net?

A. May I refresh my memory?

Q. Yes, or you can calculate it over again.

A. (Examining paper.) The bidder's mill price would have been $1.713 a barrel.

Q. As it was, what did the bidder get by virtue of the fact that he had a control clause in his bid?

A. The bidder netted $1.79287 per barrel.

Q. What is the difference between those two figures?

A. A difference of approximately 8 cents a barrel.

2332 Q. Would that have been the situation with regard to any of the other bidders?

A. The same situation as any other bidder whose mills were so located that the cement could have moved wholly or partially over the roads having agreements with the government.

Q. Are any of the other bidders so situated according to your own personal knowledge?

A. Yes, the Consolidated Cement Corporation at Fredonia is, and Ash Grove.

Q. Who received the award in this case?

A. The award was made to the Ash Grove Company.

Q. How was the award made?

A. By lot.

The witness identified Com. Ex. 369-A as a certified copy of abstract of all bids received in response to invitation for bids 483-37-95 by the Quartermaster at Fort Leavenworth, opened June 1, 1937; Com. Ex. 369-C to I as

a copy of the invitation for bids 483-37-95 issued May 15, 1937, by the Quartermaster at Fort Leavenworth. Regarding the relationship of these groups of exhibits, this is the invitation for bids made the basis of the bids which are abstracted on the abstract "Exhibit 369-A."

Q. Does it call for bids f. o. b. destination and
2333 f. o. b. shipping point?

A. Yes, sir.

Q. Looking at this abstract, can you say whether you received bids f. o. b. destination?

A. Yes, bids were received f. o. b. destination.

2334 Q. Are they identical?

A. No, not all of them are identical.

Q. How many companies bid?

A. Eight companies bid. One of them submitted no bid f. o. b. destination, four of them—

Mr. Paulson (Interrupting.) I will have to interrupt there to offer this. I offer Commission's Exhibit 369-A to I, inclusive.

Mr. Leisure: Mr. Paulson, these bids will also be available to us, will they?

Mr. Paulson: Yes.

Mr. Zimmerman: Does that exhibit contain the entire specification?

Mr. Paulson: This is the invitation to bid (indicating) and this (indicating) is the abstract, and the entire specifications are in the invitation to bid. Is that right?

The Witness: Actually, a copy of the federal specifications is not physically attached to the invitations as they go out, because generally all dealers have copies of the federal specifications, but the federal specifications applicable is cited in this invitation for bids.

Examiner Norwood: That refers to the quality of the cement and so on?

2335 The Witness: Yes, sir.

Mr. Zimmerman: Also to the character of the bids, and so forth?

The Witness: Surely.

Mr. Zimmerman: The kind of bids?

The Witness: Yes.

(COM. EX. 369-A to I inclusive was offered and received in evidence.)

Q. Looking at that abstract 369-A and B, can you state, Mr. Holmes, from your experience and general knowledge

of the subject whether or not it is possible for the government to secure the benefit of land grant rates when they receive such bids as that abstract indicates were received?

A. I only know that For Leavenworth and Fort Riley, almost any of the companies have mills located in such position that part of the shipment or all of it will
2336 move over roads giving us special rates.

Q. I do not believe that is a direct answer to my question.

Examiner Norwood: I believe you should specify the features of the bids that render it impossible to secure land grant rates. Let him know whether you are asking about destination bids or otherwise.

Mr. Paulson: I was going to ask him how and why. Will you read the question?

(The question is repeated.)

The Witness: No.

By Mr. Paulson:

Q. Why not, Mr. Holmes? On what do you base your conclusion here?

2337 A. The government is required to accept one of these so-called destination cost bids of $2.14 less the lowest net rate available. The successful bidder receives, for his commodity, $2.14 less the lowest net rate available.

Q. In the first place, then, you say the government, under that system of bidding, would have to accept the second alternate bid there—the government destination price, I understood you to say?

A. That is right.

Q. Why is that?

A. Because it is the lowest bid received.

Q. How much lower is it than the government destination cost?

A. One cent a barrel lower. The one cent difference does not reflect the difference between the commercial rate and net government rate.

Q. Can you illustrate that? What is the difference in the case of one particular bidder? Take one bidder.

A. I illustrated that in connection with the previous exhibit where there was only one cent a barrel difference in the two prices bid and yet the difference in the commercial rate and the net government rate involved several cents a barrel.

Examiner Norwood: Can you break down that figure and give the exact difference?

The Witness: The Lehigh bid in this invitation too.

2338 Now, taking, for example, the Lehigh Company's bid, who have a plant at Iola, Kansas, the difference in the two bids here is only one cent a barrel, whereas the difference in the rates shows that—

By Mr. Paulson:

Q. (Interposing.) What is the commercial rate from that shipping point?

A. The commercial rate is 11½ cents a hundred or 43.7 cents a barrel.

Q. What is the net government rate?

A. The net government rate is .09135 cents per hundred weight or 34.713 cents per barrel.

Q. What would you expect from that situation? What government destination cost would you expect if the commercial cost was $2.15 under that set of facts?

A. I would expect a destination cost of, or a point of origin cost of $1.713 per barrel.

Q. That is assuming—

A. (Interposing.) I would expect a destination cost to the government, then of $1.713 per barrel plus the net government rate, which is 34.713 cents per barrel.

Q. What does that total?

A. $2.06 plus a barrel.

Q. And you received a bid of how much? What was the bid you received?

2339 Examiner Norwood: $2.14.

The Witness: A destination cost of $2.14.

By Mr. Paulson:

Q. Mr. Holmes, do you know whether it was because of such bids as this, or responses to your invitations such as this, that you attempted to induce the cement companies to bid without use of the control clause?

A. That was the sole reason.

Q. Generally, what has been your experience in that attempt or as the result of that attempt?

A. To date we have received no public bids on a firm price f. o. b. mill.

2340 Q. You accomplished nothing by issuing your circular?

A. That is right.

Q. You said you received publicly no bids f. o. b. mill. Did you receive bids privately?

A. We had no difficulty in finding someone who would give us a secret bid f. o. b. mill.

Q. These two abstracts indicate, according to your testimony, Mr. Holmes, that the cement companies bid in such a way that you are not able to get the advantage of the land grant rate; that they bid in those two instances in such a way you could not get the benefit of the land grant rates. What would you say, in that connection as to whether they are typical or not?

A. These are typical cases; yes.

Mr. Paulson: I think that is all I have.

Cross-Examination by Mr. Leisure.

Q. Mr. Holmes, you mentioned f. o. b. mill bids. Just what is f. o. b. mill?

A. F. o. b mill is where the government price is the mill price, the government to furnish transportation to whatever destination it is goint to.

Q. And where does title pass in those cases?

A. It depends on the terms of the contract. We frequently purchase f. o. b. manufacturer's plant sub-
2341 ject to final inspection and acceptance at destination. That authorizes us to ship on a government bill of lading and yet at the same time we do not take final and absolute title to the property until received and accepted as having met the specifications.

Q. But you have to give the railroad to understand, do you not, that it is the property of the United States government; otherwise they would not let you use the land grant rate?

A. Theoretically that is true. However, it is a qualified property title that we take subject to defeasance in case the supplies do not pass our inspection.

Q. You do take title subject to defeasance, as you call it, if the goods are unsatisfactory when you receive them?

A. That is right.

Q. You take title at the mill?

A. For the purpose of shipping on government bill of lading.

Q. For the purpose of shipping on government bill of lading?

A. Yes, sir; that is correct.

Q. Have you a bid showing the control clause used by the company?

A. Those bids are on file at Fort Leavenworth.

Q. Have you the control clause there in the papers there?

A. No. I have a copy of the control clause in my files.

Mr. Zimmerman: I can not find a control clause in any of these exhibits.

2342 Mr. Leisure: Will you read this (handing paper to witness) and see if this is a typical control clause such as you have reference to?

The Witness: "The U. S. Government shall determine its cost f.o.b. cars Nashville, Tennessee, for invoicing purposes on shipments moving on U. S. Government bills of lading to the above named destination only, by subtracting from the above-mentioned destination cost to the U. S. Government the land grant rate as determined by the U. S. Government as being applicable from Nashville, Tennessee, to said destination or the actual commercial freight rate or special U. S. Government rate applicable from Nashville, Tennessee, to destination named, whichever is the lowest."

Substantially that is the same type of clause.

Mr. Leisure: That is what you call the control clause as you described?

The Witness: Yes, sir.

Mr. Leisure: And it is your testimony that some similar control clause was used in the cases you have been identifying?

The Witness: Yes, sir.

Examiner Norwood: In that case, Nashville, Tennessee, was the shipping point?

Mr. Leisure: In the case of the control clause 2343 he just read.

The Witness: This was the point of mill; yes, in this connection.

By Mr. Leisure:

Q. It would be different destinations and different mill points named in the control clause in each respective case?

A. Yes.

Q. Now, are these control clauses or are they not, used in destination cost bids?

A. Destination cost bids?

Q. I thought you used a moment ago—I made a note here when they used the words "f.o.b. mill"—I marked it "explain." I understood you used the term "destination cost".

A. We deduct the lowest—

Q. No, you used the term "destination cost", did you not?

A. In connection with the $2.14 bid; yes, sir.

Q. Now, what I wanted to ask you was whether or not a control clause similar to that is used in destination cost bids?

A. That is right.

Q. Now, in destination cost bids where does the title pass?

A. It is the same situation as I explained. The title to goods moving on Government bills of lading passes to the Government at the mill subject to defeasance in case they do not meet specifications.

2344 Mr. Leisure: That is all.

Mr. Zimmerman: I would like to ask a question or two if I may.

2345 *Cross Examination by Mr. Zimmerman.*

Q. When you did advertise for bids and bids were received, you then had complied with the statute so far as it was necessary to advertise? Everything had been done that was required of you by the statute, is that right?

A. Not altogether, no.

Q. Well, what else was required by the statute?

A. The Comptroller General of the United States has held that section 3709 must be construed to get free, unlimited competition by public advertising—

Q. (Interposing) Well, what else was required to be done by you, by the statute? That is my question.

A. It is only a matter of opinion of whether or not we had obtained the competition contemplated by section 3709.

Q. No, that is not an answer. What else if anything was required to be done by you?

A. Re-advertise.

Q. Could you not have rejected all bids and purchased on the open market if you desired?

A. Not if we thought that re-advertising would obtain successful bids.

Q. Was there anything in the statute to prevent you from rejecting all bids and purchasing on the open market?

A. Will you state the question again, please?

2346 (The question is read.)

The Witness: Yes.

By Mr. Zimmerman:

Q. What?

A. We have to re-advertise before we buy in the open market.

Q. Can you cite the section of the statute that provides for that?

A. Not at the moment, no.

Q. Will you undertake to bring it to us after luncheon?

A. The particular section of the statute that applies to the War Department.

Q. Will you undertake to bring it to us this afternoon?

A. I will be delighted.

Q. So that you could not if you wanted to, take advantage of any of these offers to sell you cement at more favorable prices? You have described that you had offers to sell you cement at more favorable prices than those bid.

A. Well, we took advantage of them after the second advertisement.

Q. You could then after having advertised twice, take advantage of them?

A. Yes.

Q. And did you?

A. We did.

Q. So that eventually you got what you consid-

2347 ered a satisfactory price, did you?

A. We got a price that was in response to our request.

Q. I see. Well now, on a destination cost bid, are you able to tell from any one of these exhibits and give us an example of what price the government was required to pay f.o.b. mill on such a bid?

A. What price we were required to pay at the mill? That is, the invoice price?

Q. Yes.

A. On one of these for Fort Leavenworth, we were required to pay $1.79287 per barrel.

Q. F.O.B. mill?

A. That is right.

Q. That was then the f.o.b. mill bid, wasn't it?

A. No, it was not an f.o.b. mill.

Q. That is where you took title, wasn't it; at the mill?

A. It is not a firm bid, f.o.b. mill.

Q. What do you mean by "firm?"

A. I mean when you say "A" you mean "A". When you quote a price of $1.50, it does not take a lot of rapid calculation by a group of rate clerks that are already overburdened to determine what our invoice price will be.

Q. That is one of the objections, is it, that your rate clerks are overburdened and you have some difficulty with it?

A. Well, that is certainly an important objection to us.

2348 Q. Well now then, could you say that you had received no benefit at all from your land grant rates if you were able to figure out what an f.o.b. mill price was and took title at the mill?

A. I think I have covered that right clearly as showing the savings resulting from land grant rates in the amount of about 7 cents per barrel which should have inured to the benefit of the United States and inured to the benefit of the cement company.

Q. If they had been willing to quote so much lower price at the mill?

A. That is right.

Q. But because they did not do so, you were put to the trouble and inconvenience of advertising twice before you could finally get a satisfactory price?

A. Yes, sir.

Mr. Zimmerman: That is all.

Redirect Examination by Mr. Paulson.

Q. I have just one question on redirect and that is in connection with Mr. Zimmerman's last question where I believe he said if they had been willing to quote so low a price at the mill. As it worked out, Mr. Holmes, did they quote a higher price to the government at the mill than

they did to the commercial world, assuming that the
2349 destination cost bid to the government was the destination cost bid to the commercial world?

A. I do not think I could answer that question.

Q. Well, just consider it from the standpoint of mill nets. As you figure it out, did they net more on their sales to the government than they would to the commercial world, assuming that the destination price bid the government was the price which they were bidding to the commercial world?

A. Yes.

Mr. Paulson: That is all.

Recross Examination by Mr. Leisure.

Q. Mr. Witness, that assumes, does it not, that they would be willing to accept the lower price at the mill? You have got to assume in that answer that state of facts, have you not?

A. In that question, we assumed that the $2.15 destination was the same—to the government—was the same as the destination cost to any private purchaser.

Q. And that they would quote the same price in some other competitive field?

A. That is right.

Q. You have got to assume that?

A. Oh, yes; that is purely an assumption.

Mr. Leisure: That is all.

2356 EDWARD T. WIDMANN was recalled as a witness on behalf of the Commission and, having been previously duly sworn, was examined and testified further as follows:

2257 The Witness: Yes. On page 1684, line 25, I was asked: "Then you are able to state for the record
2358 whether or not the photostats and typewritten copies about which you talked were all secured from Mr. Peters of the Giant Portland Cement Company?"

On page 1685, line 4, in response to that question I stated as follows:

"Yes. The majority of these are photostats of correspondence and other materials selected from the files of

the Lawrence Portland Cement Company. The other material is original and was furnished to me by Mr. James H. Ackerman."

The Witness: In stating "Yes", I was replying directly to the preceding question and referring to Exhibits Nos. 251, 252-A to DDD, inclusive, 253-A to B, 254-A to B, 255-A to F, 256, and 257-A to G. The second portion of the reply which I made and which appears at line 4, page 1685, namely "The majority of these are photostats of correspondence and other materials selected from the files of the Lawrence Portland Cement Company" relates to Exhibits 258-A to F, 259-A to F, 260-A to B, 261, 262-A to F, 263-A to O, 264-A to D, 265-A to E, 266-A to B, 267-A to B, 268-A to F, 269-A to E, 270-A to J, 271, 272-A to J, and 273.

2359 ROBERT H. ARMSTRONG, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

I am assistant chief of accounts of the Bureau of Prisons under the Department of Justice and have been since July 16, 1928. During that time in the matter of purchasing cement I have had charge of procurement activities for the penal and correctional institutions.

Q. What are the approximate requirements in barrels of the Bureau of Prisons?

A. That varies from year to year. It is pretty hard to give an estimate, but it will probably run from a minimum of 25,000 barrels a year to something over 100,000 per year?

2360 Q. Can you say what your purchases were last year?

A. No, I could not say definitely.

Q. Approximately?

2361 A. Approximately 75,000 barrels.

Q. What accounts for such a wide variation between the cement needs of the Bureau of Prisons?

A. It depends on the amount of construction work we do with prison labor.

Q. How do you go about obtaining cement for prison construction?

A. We advertise for bids for our requirements in the usual manner.

Q. Do you buy or seek to buy direct from manufacturers of cement?

A. Yes.

Q. Do you ordinarily purchase direct from the manufacturers?

A. We do.

Q. Is there any division between the way larger quantities are handled and smaller quantities so far as the invitations to bid and passing on the awards is concerned?

A. No, they are all handled in the same way.

Q. Do you pass on all the bids?

A. Some bids are opened in the field and some are opened at our central office here in Washington.

Q. What determines which shall be opened in the field and which here?

A. There is no set rule. In some instances we authorize the institutions to purchase their own materials
2362 and others we do not.

Q. Does the quantity involved enter into that decision?

A. Not necessarily.

2363 Q. What is the purpose underlying your invitation for bids?

A. To obtain competition on our requirements and to get bids at the lowest possible price.

Q. Do you determine your own specifications independently of other government departments or do you use the same form of specification used by some other government department?

A. No, we purchase in accordance with the government specifications—the adopted Federal specifications.

Q. The same specifications as other departments?

A. Yes, sir.

Q. Do you use a similar form of invitation with other departments?

A. Yes, sir; a similar form.

Q. Has the Bureau of Prisons endeavored to get quotations from manufacturers on an f. o. b. shipping point basis?

A. Yes.

Q. Was that effort made regularly and continuously, or just from time to time?

A. It was made some years ago. It has not been made very often recently because—

Q. (Interposing): Why has the policy in that respect or practice in that respect been changed?

A. We have found it very difficult, if not impossible, to get quotations f. o. b. contractor's shipping point.

Q. Do you still invite bids f. o. b. shipping point?

2364 A. At some points we do.

Q. Do you get, in response to such invitations, bids f. o. b. shipping point?

A. No.

Q. Do you get any bid in lieu of your request for a bid f. o. b. shipping point?

A. We get a rider—

Q. (Interposing): A what?

A. There is usually a rider attached to the bid authorizing the deduction of the lowest commercial rate or government land grant rate from the amount of the f. o. b. destination price, the rider saying that the government may determine the f. o. b. shipping point price on that basis.

Q. Then, do you also get a figure which is an f. o. b. destination price?

A. The figure quoted is an f. o. b. destination price.

Q. Are you familiar with the expression, "government destination cost?"

A. Government destination cost?

Q. Yes.

A. Yes, I have seen that on the bids.

Q. What is the so-called government destination cost?

A. I am not sure that I know exactly what you refer to.

The witness identified Com. Ex. 370 A to R 2365 as abstract of bids received at the United States Penitentiary, Leavenworth, Kansas, on September 3, 1935; "the contract awarded to the Lone Star Cement Corporation on the basis of those bids, and other bids which were rejected, received at the same time." The date is September 3, 1935. The amount is 1,000 barrels for delivery at the United States Penitentiary, Leavenworth, Kansas. The papers contain the invitation to bid, the contractor's f.o.b. shipping point to be used at Fort Leavenworth, Kansas.

Mr. Wooden: I offer the papers for the record and I have here photostatic copies of the bids. Perhaps I should amend that offer by saying I will offer the

abstract and tender the original bids for examination and I have here photostatic copies of the original bids.

2366 Mr. Leisure: Are you offering these?

Mr. Wooden: I first intended to, but I changed it.

Mr. Leisure: Then the offer is of 370-A?

Mr. Wooden: Yes, just 370-A.

(COM. EX. 370 was offered and received in evidence.)

Q. I understood you to say, Mr. Armstrong, that you asked for bids in this case f. o. b. shipping point?

A. That is right.

Q. Did you get any bids on that basis?

A. Only with the rider. The quotation was f. o. b. destination with the rider permitting the government to determine the cost at contractor's shipping point by deducting the lowest possible freight rate.

Q. Who were the bidders and what were their bids per barrel on that transaction?

A. The Universal Atlas Cement Company, $2.163424 per barrel.

Ash Grove Cement Company, $2.16324 per barrel.

Missouri Portland Cement Company the same bid.

Lone Star Cement Company the same amount per barrel.

Lehigh Portland Cement Company the same amount per barrel

Lehigh Portland Cement Company the same amount per barrel.

2367 Monarch Cement Company the same amount per barrel

Consolidated Cement Company, $2.17528 per barrel.

Dewey Portland Cement Company, $2.16324 per barrel.

Q. There was one company, the Consolidated, I believe, nearly a cent higher than the others?

A. Yes, sir.

Q. The others were the same?

A. That is right.

2368 Q. Do I understand the Lone Star Company was awarded the contract in that case?

A. Yes, sir.

Q. How was the award made; on what ground?

A. It was found that land grant rates were involved in connection with the shipments from all destinations except two.

Q. What were they?

A. The Lone Star Cement Company and the Missouri

Portland Cement Company, I believe is the other one. The companies with land grant rates were eliminated and the award was made by lot between the Missouri Portland Cement Company and the Lone Stat Cement Company.

Q. Why were the companies having land grant rates eliminated from consideration when their delivered prices were the same?

A. It was considered that the bids were on such a basis that the Government was prohibited from obtaining the advantage of land grant rates and to award it to a company in which land grant rates were involved would give that advantage to them, therefore it was considered proper to eliminate them and to award it to the two companies that did not have a land grant rate.

Q. As the result, did the Government pay the commercial rate of freight on the actual transportation?

2369 A. The bid was awarded f. o. b. destination and one shipment was made on that basis.

Q. On what basis?

A. F. o. b. destination.

Q. Then how was the payment handled as between freight and the material?

A. The entire amount including freight was paid to the company for that shipment. The company then decided they could not ship any more cement unless we furnished them government bill of lading.

Q. And was that done?

A. That was done in order to get the cement.

Q. How much did that first shipment amount to?

A. I do not have that.

Q. There was a thousand barrels involved in the whole lot?

A. Yes, but I do not know the amount of the first shipment. I think you have a notation on some of the papers that you got from our department.

Q. I do not understand how if the Lone Star had no land grant advantages or facilities, that you would get any advantage from the land grant by using government bill of lading on the shipment.

A. We did not get any advantage.

Examiner Norwood: Why did they want that government bill of lading?

2370 The Witness: I don't know. They demanded it and it was furnished in order to get the cement.

By Mr. Wooden:

Q. Well, at any rate, that did not give you the advantage of the land grant rate to ship it on government bill of lading?

A. Oh, no. There was no land grant involved.

Q. Then if the land grant rate was not paid, I assume the commercial rate was, is that right?

A. The commercial rate was paid to the railroad company on the subsequent shipments.

Q. By whom?

A. By the government.

Q. How were the invoices made out? Were they made on the basis of the delivered price with a deduction for freight?

A. I don't recall.

Q. At any rate, payment was made to the railroad for the commercial freight and the balance to the shipper?

A. On all shipments except the first one.

Q. Do you know what the difference between the land grant rate and the commercial rate was in this particular instance?

A. I don't know exactly. I know generally that Leavenworth considers on cement they save something close to 10 cents a barrel if they can get land grant rates.

Mr. Zimmerman. From where?

2371 The Witness: From the companies that they usually award to. That is an average figure; I do not have any exact rate.

The witness identified Com. Ex. 371-A and B as a photostatic copy of a letter dated October 19, 1937, from the Warden of the United States Penitentiary at Leavenworth, Kansas. It relates to this particular transaction or purchase that "we have just been going over." It is addressed to the Director of the Bureau of Prisons. The witness recoignizes that signature on the letter and said that that letter passed over his desk in the regular course of his duties.

2380 Q. What are the papers I show you marked Exhibit 372-A and C for identification.

A. Abstracts of bids received at the United States Northeastern Penitentiary at Lewisburg, Pennsylvania on September 6, 1935, for 264 barrels of cement, and contract awarded to the Universal Atlas Cement Company as a result of that opening.

Mr. Wooden: I offer the papers for the record. I have here photostats of them and I would like to substitute the photostats for the originals.

Mr. Leisure: No objection to the substitution. Do you have the original bids here, Mr. Wooden?

Mr. Wooden: The only thing we have is what you have there. Is that a sample bid?

The Witness: That is a signed copy of the contract. We do not have copies of the rejected bids here.

2381 Mr. Leisure: Are these not carried in the ordinary form of the other abstracts?

Mr. Wooden: I think so. That is my understanding.

Mr. Leisure: I mean the abstracts we have used heretofore have been in typewritten form. This is just a piece of paper.

The Witness: I do not have copies of the abstracts here.

By Mr. Wooden:

Q. Does this paper here purport to give a statement of the bids and the names of the bidders?

A. It is a copy of the abstract of bids received on September 6, 1935.

Q. Where is the abstract itself?

A. It is in the records of the Bureau of Prisons. I am not sure whether the signed original is at the United States Northeastern Penitentiary or in the Bureau files here in Washington.

Q. There is only one bid there. Is that the bid of the successful bidder?

A. That is the successful bid; that is the contract.

2382 The Witness: It is a copy of the abstract.

Mr. Leisure: May I just ask the witness a question?

Examiner Norwood: Yes.

Mr. Leisure: Is that a complete copy of the abstract? Or isn't that just an excerpt prepared to give the number of companies that bid?

The Witness: This is a copy of the abstract.

Mr. Leisure: It is a complete copy of an abstract? For instance, would the original abstract only say what is on that page?

The Witness: Yes, sir.

Mr. Leisure: Are you sure of that?

The Witness: Yes, I am quite sure this was furnished

as the abstract of bids. I assume you have reference to the fact that the prices are not recorded after each bid.

Mr. Leisure: In all government abstracts that I have ever seen, it has contained those prices and has con-
2383 tained a great deal more.

The Witness: But there is a statement here which says, "Eleven bids at $2.29 a barrel, discount of 10 cents per barrel for cash within 15 days were submitted by the following contractors," and the contractors were listed.

Mr. Leisure: Mr. Armstrong, was there another abstract in fuller form in existence from which that paper was obtained?

The Witness: An abstract was no doubt prepared when the bids were opened, in pencil, written down in pencil when the bids were read.

Mr. Leisure: Which contained all of this information which your are describing?

The Witness: Yes, it would contain that information. Whether or not it would have a price after each one or not, I could not say as to that. I would not necessarily have to.

Mr. Leisure: I think we should have the abstract. I am willing to go along that far in trying to save time, but I do not want to get excerpts of abstracts.

Mr. Wooden: He says this is not an excerpt but a copy of the abstract.

Mr. Leisure: It appears on its face that it cannot be.

2384 Examiner Norwood: Can he testify that it is a true copy of the abstract?

The Witness: I have already done that.

2385 Examiner Norwood: Where are the original bids?

The Witness: The original bids are in the General Accounting Office.

Examiner Norwood: Here in Washington?

The Witness: Yes.

Examiner Norwood: They are available?

The Witness: I could not say as to that.

2386 Examiner Norwood: I would sustain the objection, and the counsel can secure the original bids or the original abstract. He can get that later.

By Mr. Wooden:

Q. Will you undertake to do that, Mr. Armstrong?

A. Yes.

Mr. Wooden: Do you want the original bids or just the original abstract, or both?

Mr. Leisure: Are they here in Washington?

Mr. Wooden: I don't know.

The Witness: The original bids would be in the General Accounting Office, and so is the original signed copy. I could not undertake to get that for you; you would have to get that from the Comptroller General. I can get a copy of the rejected bids from the institution.

Mr. Wooden: How about that? Would you be satisfied with copies of the bids that were not accepted?

By Mr. Wooden:

Q. Is this the original of an accepted bid?

A. That is the accepted bid, that is a signed copy of the contract. (Indicating).

Q. That is a duplicate of the one that is in the
2387 General Accounting Office, I take it?

A. Yes.

Q. And you can get that duplicate?

(COM. EX. 372-A and B was offered and received in evidence.)

2388 The Witness: I think that is still available. That is a while ago, but I think it is still in the records.

Mr. Wooden: Your Honor, I put this transaction in because it happens to be one of the instances that is mentioned in the complaint itself, it appearing that 11 bids of $2.29 per barrel were filed on that transaction.

The witness identified Com. Ex. 373 A as a list of bids received July 12, 1936 at the United States Industrial Reformatory, Chillicothe, Ohio, for 500 barrels of cement; Com. Ex. 373 B as a contract awarded as a result of
2389 that opening. The list that comprises "373 A" does not purport to be an abstract. It is simply a list of bids prepared at the United States Industrial Reformatory at Chillicothe, Ohio. This is not the abstract that was submitted with the contract, "if that is what you mean." The paper itself that comprises the list came from "our" Bureau. All of the handwriting on the list with the exception of the notation "373 A" and "C-Cement" is that of the witness. He put those handwritten notes on the paper when he examined the file to get this signed copy of a contract.

2391 (COM. EX. 373-A and B inclusive was offered and received in evidence.)

Q. Mr. Armstrong, can you say approximately how

many purchases of cement the Bureau of Prisons makes in a year?

A. That would be purely an estimate.

Q. I understand that. Give us your best judgment on it.

A. I would say 35 or 40.

Q. To what extent can these particular cases involved in the exhibits which you have identified, be taken as typical or representative of the experience of the Bureau of Prisons in getting bids on cement?

Mr. Leisure: That question is much too broad. There are so many different circumstances, Your Honor, that might be taken into consideration as to what is typical, and since it is being presented against us in the nature of a charge, I think—

Mr. Wooden: I will make it more specific.

By Mr. Wooden:

Q. When I say "typical", Mr. Armstrong, I mean with reference to whether or not the delivered prices quoted are identical or not?

2392 A. In almost all instances they are identical. There are rare occasions, as indicated in one of these abstracts, where a bid different from the usual run is received.

Q. Over what length of time would your answer apply?

A. As to price, it would apply from 1928, the time of my entry on duty with the Bureau of Prisons.

Q. Do you find similar conditions as to prices in the purchase of other commodities?

Mr. Leisure: I object to that question as being incompetent, irrelevant and immaterial and not within any of the issues presented by the pleadings in this case. What happened with regard to other industries is not material to any of those issues.

Examiner Norwood: I think it is relevant to see whether or not there are any differences between conditions in this industry and other industries.

Mr. Leisure: It might show that, but it would not be material evidence as to whether any of the defendants are guilty of the charges in this complaint and that is the point of my objection.

Mr. Wooden: It goes to the point of whether this condition of identical bidding is a competitive condition or

not and, if so, it ought to show itself in other in-
2393 dustries.

Examiner Norwood: Objection overruled. He may give us his experience in that respect. Base your answer on your actual experience.

The Witness: In the majority of cases, prices quoted are different.

By Mr. Wooden:

Q. You mean as to other commodities?

A. As to other commodities.

Q. Can you buy other commodities f.o.b. shipping point?

A. Yes, sir.

Q. Will you state some of the commodities that you can buy f.o.b. shipping point and on which you find the prices different?

Mr. Leisure: Your Honor understands that my objection goes to this entire line of questioning as to other products?

Examiner Norwood: Yes.

Mr. Leisure: And I have an exception to all that?

Examiner Norwood: That is understood.

The Witness: Sugar, meats, coffee, coal—I should modify that answer as to coal because up until recently the price was different—and lumber.

2394 Q. Would you make any distinction as to lumber depending on what kind of lumber or where you bought it, or do you want to make an all-inclusive answer?

A. I do not know of any distinction offhand. If there is, it has not come to my attention.

2395 *Cross Examination by Mr. Leisure.*

Q. You said the United States Bureau of Prisons buys these amounts. Could you give us a full tabulation and showing the number of separate occasions upon which cement bids have been requested?

A. I could prepare such an estimate. Whether I could deliver it here or not would be subject to the head of my department, of course.

2397 Mr. Leisure: Unless the witness is willing to produce this supporting data on his testimony, I have no other course than to move that the testimony be

stricken out, because he gave very general testimony as to these jobs. Now, the best evidence of course would be the figures covering those jobs. I did not want to interrupt his examination and ask that the Government produce them immediately, but if they are offered against us in this way, it is necessary for me to follow it up and show what proportion was dealer business and what proportion was not covered by identical bids, and all of the other necessary data.

2401 Mr. Leisure: How does the record stand now? Are you going to furnish us this data?

The Witness: No, you are asking me to furnish something I do not have authority to furnish.

Mr. Leisure: Your answer is no that you will not furnish it—I am asking for the record?

The Witness: My answer is no, I cannot furnish it.

2403 Q. Now, Mr. Armstrong, one other point: You said, I believe, you used the same specifications for bids as other government departments used. What did you mean by specifications?

2404 A. I mean description of quality and kind of cement. There is an established Federal specification covering cement.

Q. And those invitations both require the cement to come up to certain standard United States Government specifications, do they, Mr. Armstrong?

A. That requirement is typed or mimeographed on the form. Those standard forms are for the purchase of various commodities and not cement alone. The specifications are either incorporated on the standard bid or referred to or attached, and the cement companies, I believe, usually have copies of those Federal specifications without enclosing copies in every instance.

Q. Is the answer yes, that those specifications require the cement to come up to certain required specifications?

A. That is right.

Q. In reply to a general question on land grant

2405 rates, you gave a general answer. You said that you considered that the government had been deprived of all benefit of land grant rates by the six companies located on land grant lines. Would you just explain that answer so that the record will show what you mean by that?

The Witness: When we ask for bids f.o.b. destination, we have the object in mind of furnishing the government bill of lading for the shipment of the commodity in order that we may obtain the advantage of the land grant rates. If we have to buy f.o.b. destination and cannot get a bid f.o.b. contractor's shipping point, naturally we do not use our government bill of lading and the assumption is that we do not obtain the advantage of the land grant rates.

By Mr. Leisure:

Q. And it was on that reasoning that you based your answer?

A. Yes.

Q. Now, you also said that you figured you saved 10 cents a barrel on cement from Fort Leavenworth when you got the land grant rate?

A. Approximately.

Q. Will you explain how you saved 10 cents?

A. It would be the difference in the commercial
2406 freight rate and the land grant freight rate.

Q. Does that apply to every instance? Does that apply to every sale?

A. At Leavenworth?

Q. Yes; every sale at Leavenworth?

A. You are speaking of cement?

Q. Every sale of cement at Leavenworth.

A. It has been our experience that we saved, when we did, a good many years ago, get bids f.o.b. contractor's shipping point—we saved around 10 cents a barrel. Naturally, the amount would vary as to the point of shipment. It would not be the same in each instance, but that is an approximate, average figure.

Q. You do not buy your cement from the same companies, do you?

A. No, sir.

Q. And your testimony is that you save approximately 10 cents regardless of the company your purchased the cement from?

A. Yes, on the land grant freight rate basis.

Q. From any company?

A. The 10 cents is an approximate average figure.

Q. Explain that, will you please?

A. The saving would not be the same when the shipment was made from different destinations or from
2407 different shipping points, rather.

Q. How did you arrive at that figure of 10 cents?
A. From information from the records.
Q. Did you compute it personally or is that just your judgment as to what you saved?
A. I did not compute it personally; no.
Q. Then, where did the information come from?
A. The information originated with the United States Penitentiary at Leavenworth, Kansas.
Q. Now, you testified about two or three instances of cement bids out of these invitations. Did you select these specific instances yourself?
A. No, sir.
Q. How was that selection made?
A. The Federal Trade Commission requested the information on those particular openings.
Q. And specified the openings they were interested in?
A. Yes, sir.
Q. Now, at another time you also said on your direct examination, Mr. Armstrong, that you generally received bids which were identical as to price. Do you know whether or not the terms and the conditions were also identical?
A. Several years ago there was some variation as to terms. Recently, however, there has been little variation as to any terms.
2408 Q. That is, the terms and conditions have been identical also recently? Are you testifying now of your own knowledge? Is that your observation?
A. Yes, sir. Practically identical. There are minor differences.
Q. And when you say "recently," just what do you mean by "recently"? How far back does that go?
A. I would say two or three years or perhaps further. I am not positive on that.
Q. Before you came to testify, did you check back all the terms and conditions of the bids back for two or three years, so that you are now prepared to say they are all identical?
A. No, sir; I am speaking from my general knowledge in examining and handling bids on cement.
Q. I believe you said it was your experience in the purchase of cement, on behalf of your department, that all other products were very dissimilar in identical prices?
A. I did not say all other products; I said the majority.
Q. What has been your experience with respect to other

products? Have you found them submitting identical prices also, if the product were standard?

A. In the majority of cases, the bids are different—the prices are different.

2412 Q. Now, you gave testimony quite freely when the attorney for the Commission asked you about identical bids on cement, didn't you?

2413 A. I did.

Q. And then when he asked you about other industries, you testified quite freely about the situation as to other industries, did you not?

A. I did.

Q. Without hesitation. Now, what is it that keeps you from telling me now what other products you received identical bids on?

A. I do not wish to make a statement about any other industry without going over our records to some extent. You understand that we have been requested for information regarding cement and must know that, and without going over records, I do not want to point out definite items.

Q. I appreciate your embarrassment, Mr. Witness, and I won't press you on it. In other words, you want to answer specific things that the Trade Commission asked you about, is that it?

A. That's it.

Q. But you are not familiar with the other instances?

A. I am with the bids, you understand, but I would not want to make the definite statement as to identical bids on other items for fear of making a mistake without consulting my records.

Q. But you did not have that fear when Mr. Wooden examined you?

A. I said nothing about identical bids on other 2414 commodities when Mr. Wooden was asking me. I did not point out items on which we got identical bids.

Q. I believe you said something about it; you said you did not have them on other products, as I understood you.

A. I said on the majority of other products we did not get identical bids.

2416 Washington, D. C.,
Thursday, January 20, 1938.

2417 By Mr. Wooden.

Q. Mr. Armstrong, at the close of last night's hearing, you were asked a question about the proportion between the purchases of cement for the Bureau of Prisons made through the mills and the approximate proportion made through the dealers. You did say you could not give any definite percentage, but could state you knew certain things and then you were interrupted and never finished your answer.

A. I started to say that I know that most of it is purchased from the mills.

Q. Now, in purchasing some of these other commodities, such as coal and lumber, do you buy them on specifications?

A. Yes.

Q. So that, for the purposes of your purchases, the quality is specified in the specifications?

A. That is right.

2418 Q. And yet, even on those specifications, you got different prices? Is that correct?

A. I do not say we got different prices on all openings. We did on some.

Q. Sometimes you do?

A. Yes.

Q. Now, something was said on cross-examination about these three cases that you have gone over in your testimony. Were you aware that two of the cases were cases that were set out in the complaint?

A. I heard you make the remark to that effect.

Q. Did you ever check the complaint to see if that was true?

A. Yes, I did. A copy was furnished to the department and I saw the complaint.

2419 W. E. HAYGHE was recalled as a witness for the Commission, and testified further as follows:

Cross-Examination (Continued) by Mr. Leisure.

Q. Mr. Hayghe, before your illness, when you were on the stand before, we were talking about the Groveland Florida, bid. Do you recall that?

A. Yes.

Q. Shown in Exhibit 344-B and C?

A. Yes.

Q. Now, I think, just to recapitulate for a minute, we said that the exhibit showed that there were 300 barrels in that shipment. Is that correct?

A. That is correct; yes, sir.

2420 Q. Then you asked me the number of pounds per barrel and I said 380 and we multiplied 380 by 300 and that gave 114,000.

A. If you please, might I offer a word?

Q. Yes.

A. Since the question was asked, we have developed the reasons for those differences in the figures.

Q. Suppose you just give them to us now.

A. We have determined that at the time this award was made, the rates furnished the State Procurement Office were different than those which we have more lately developed to be the correct rate and that was brought about by a certain division sheet of the L. & N. Railroad, which was ambiguous in its application, but we later negotiated with the L. & N. and discovered the correct method of its application.

Now, I have with me the rate man in my office who actually worked on that if you would like the detailed information regarding the differences in rates.

Q. Do I under you correctly that when the rate was figured on Tampa, using the land grant rate of .13375—that is shown on the exhibit?

A. Yes, sir.

Q. —that gave a total amount which is shown on Exhibit 334-C of $152.76?

A. I do not recall that I computed Tampa.

Q. I did not ask if you computed it: I said that

2421 is shown on 334-C? Is that correct?

A. Yes, sir. With respect to Tampa, I do recall we quoted .134 to the State Procurement Officer, and that came about in this way, that in the disposition of the fractions, in order to reduce the length of the wire, we quoted a three-figure rate instead of a five-figure rate in that particular instance.

Q. Now, in the Boyles instance, where it is given on 334-A, the land grant rate which was used in that exhibit is .16637?

A. Yes, sir.

Q. And as shown by the abstract, 334-C, it came to $164.16?

A. And that approximately is correct in accordance with the rate we furnished our State Procurement Officer initially. I have the details of that in the material I have with me this morning, if you would like to have it.

Q. And as to Clinchfield, as shown by 334-A, the land grant rate which was used, was .18590. Is that correct?

A. That is correct.

Q. And that gave the result of $200.64, as shown by 334-C? Is that correct?

A. That is the Penn-Dixie?

Q. Yes.

A. $200.64 is the cost shown.

Q. And as to the one from Phoenixville, 334-A, the land grant rate actually used for your government men
2422 was .16637, as shown by exhibit 334-A?

A. That is the rate we have recently developed to be the correct rate; yes, sir.

Q. And that came to $164.16, as shown by exhibit 334-C?

A. No, sir; that $164.16 was based on the incorrect rate which was furnished at the time the contract was awarded.

Q. Will you tell us where those rates came from that were used, that give a figure of $164.16?

A. They came from my office.

Q. From your office?

A. Yes, sir.

Q. Let me just finish, then. There are only two more, which completes the exhibit.

As to Ragland, 334-A, as figured by your office, the correct land grant rate was .17147?

A. That is correct.

Q. And the men in the field arrived at $206.34 apparently, not using that rate?

A. I beg pardon. The men in the field, at the time the rate was used, used the rate which was furnished by our office, but which was later discovered to be incorrect.

Q. They used that and that was shown on Exhibit 334-C?

A. Which company is that?

Q. That is the Ragland—

A. (Interposing): What is the name of that com-
2423 pany? It does not indicate it on the sheet here. Is it the Universal?

Q. Is not Ragland indicated on the side?

A. Pardon me. It is the National—$206.34.

Q. There is only one more, and that is Leeds. You determined that the correct land grant rate was .19254?

A. Correct.

Q. The rate arrived at on Exhibit 334-C, however, was $200.64. Is that correct?

A. The rate which was used resulted in that cost; yes.

Q. And that is actually shown on the exhibit as $200.64?

A. $200.64; yes, sir.

Q. Now, as to that entire group shown on Exhibit 334-C, $152.76, $164.16, $200.64, $164.16, $206.34, and $200.64—as I understand you now, that entire group is wrong?

A. The entire group is wrong.

Q. And those figures came from your office?

A. The figures on which these figures were based, came from our office.

Q. And those finals which I have just read to you are the amounts which were actually used for the purpose of awarding the bid?

A. For the purpose of settling the contract, yes sir. The bid was awarded on the drawing, but for the purpose of settling—

Q. (Interposing.) Is not that being technical?

2424 A. For the purpose of settling, that was the rate that was used.

2425 Q. Whereas the correct rate instead of 152.76 should have been 152.48. That is on Exhibit 334-A?

A. I cannot say without computing that.

Q. It has already been computed, has it not?

A. Not the total cost, no sir. This sheet (indicating) simply gives the rate per 100 pounds, whereas this sheet (indicating) gives the total cost of transportation.

Q. Well, if you multiply the correct rate which is 13375 by 14,000, it will give you the correct rate. Do you find the correct rate 152.48?

A. 152.76 would have been the cost—

Q. (Interrupting.) That is the way it was figured the first time. I am asking you to figure the correct rate. 13375 on what you now say is the correct land grand rate.

A. 152.48.

Q. That is correct, isn't it?

A. Yes.

Q. Now, the next one, does it or does it not come to 189.66 instead of the rate which was used of 164.16 using the land grant rate shown on your exhibit 334-A which is .16637?

A. 189.66.

Q. Now, on the Clinchfield. If you used the correct land grant rate or the rate which you now say was the correct land grant rate of .18590, would that not give you
2426 211.93 instead of 200.64 as was used?

A. 211.93.

Q. And that is correct, isn't it?

A. That is correct.

Q. Now, as to the Pheonixville, if you used what you now say was the correct land grant rate, .16637, would it not give 189.66 instead of 164.16 that was used?

A. That is correct.

Q. Now, taking Ragland; using the correct land grant rate, or the one that you now say is the correct land grant rate, .171147, would that not give 195.48 instead of 206.34?

A. 195.48.

Q. Now, one more. If you used the correct land grant rate or the one that you have last used, namely .19254, would that not give 219.50 rather than 200.64 which was used in Exhibit 334-C?

A. 219.50.

Q. That is correct, isn't it?

A. Yes.

Q. Now, Mr. Hayghe, what was the bid that was accepted? Will you just look at your exhibit there and tell us whether or not 2.52 was the accepted bid?

A. The accepted bid was 2.52.

Q. Now, of course, you had no way of knowing in the government what the price base was on any particular mill?

2427 A. The price base? I do not quite understand what you mean.

Q. How particular companies started from its own mill in building up its price?

A. No, we would not know.

Q. But you did know what the commercial rate was, for instance, from that mill to the point of destination?

A. Yes.

Q. At least, you could find out?

A. Yes, that was available.

Q. Now, assuming in this bid that the price base as far as Jacksonville, Florida, was concerned was 1.85, what was the commercial rate? Is it shown there on the bid of .175 or was it figured at 67 cents? To be exact 66⅔, and you would drop the ⅔ and make it 67?

A. We are speaking of Tampa now?

Q. Jacksonville.

A. I do not have any form Jacksonville here.

Q. Well, if the commercial rate is 67 cents— just write that, will you?

A. (Writing.) Yes, 67.

Q. Suppose you had the price base of 1.85.

A. Yes.

Q. And you have a commercial rate of 67 cents and you add those, that will give the amount of the bid
2428 of 2.52, would it not?

A. That would produce 2.52, yes.

Q. Now, if you looked at it from the point of view of destination cost bid to the government, if you start with the same price base of 1.85 and then you use, without dropping the fractions as I believe the government figures its land grant rates, you do not drop the fractions?

A. No, we go three places.

Q. If you used .665 and added that, that would give you 2.515?

A. That is correct.

Q. Without dropping the fractions. Now, without going through all of those figures, will you just take for instance another one of these mills which was bidding—take the Tampa mill and assume for a moment that the price base there was $2.05 at Tampa.

A. Yes, sir.

Q. And the freight rate as shown by Exhibit 334-A was 51 cents.

A. Per barrel?

Q. Yes.

A. Yes, sir.

Q. That would give 2.56?

A. That would be true.

Q. And that would be 4 cents higher per barrel
2429 than the bid which was accepted of 2.52, would it not?

A. Yes.

Q. Now, take the Boyles one that we have just been talking about. Assuming that the price base there was 1.90, and that the freight rate used was one that is shown in Exhibit 334-A of 1.05?

2430 A. That 1.05 or 1.045 is the commercial rate—

Q. (Interposing.) I can carry it on to these decimals if you want me to?

A. 1.05 is the commercial rate.

Mr. Wooden: May I have a clear understanding of whether these base prices of 1.85 or 1.90 are parts of the record or are they pure assumption?

Mr. Leisure: I am just asking him to assume that for a moment, and I think it will be very clear in a moment what my object is.

By Mr. Leisure:

Q. That gives 2.95?

A. Yes.

Q. The commercial rate plus the price base is 2.95?

A. Yes.

Q. And that would be 43 cents higher than the bid price which was accepted of 2.52?

A. 43 cents higher.

Q. Now, take the one of the Clinchfield. Assuming that the price base there was 2.05 and that the commercial rate was 84 cents as shown by Exhibit 334-A?

A. 84 cents.

Q. That would give a total of 2.89?

A. That is true.

Q. And that, Mr. Hayghe, would be 37 cents higher 2431 than the price which was accepted as the lowest bid?

A. Yes, sir.

Q. Now, is it not apparent or it is apparent to you, Mr. Hayghe, that any one of these other bids, Tampa, Boyles, Clinchfield, would not be successful if a bid of 2.52 would be submitted?

A. They would not have been successful if a bid of 2.52 were submitted?

Q. Would that not be apparent?

Examiner Norwood: Assuming that bid on the figures you have given.

By Mr. Leisure:

Q. Assuming they made up their bids exactly the same way as the Jacksonville bid was made up, they made it up at their own plant in exactly the same way, would it or would it not be apparent to anybody that those bids would not be acceptable if they knew that a bid of $2.52 could be submitted by Jacksonville?

A. We have no bids from Jacksonville. You mean a delivered price at Groveland?

Q. If you want me to go through these decimals, I can

do it on the side. I was merely trying to save time. I think you can answer the question whether or not if a bid of 2.52 was submitted, would the government accept a bid from Tampa at 4 cents higher, or a bid from Boyles at 43
2432 cents higher, or a bid from Clinchfield at 37 cents higher, per mill?

A. No, they would not accept a higher bid.

Q. So that any one figuring the bids from either Tampa or Boyles or Clinchfield, if they had the facts referring to the Jacksonville base would know that they would not be successful if they submitted bids at these higher prices, isn't that clear?

A. That is very clear, yes.

Q. So then, is it or is it not apparent to you that at least this is one instance where bids might be submitted by Tampa, by Boyles, and by Clinchfield at the same price or at identical prices with the Jacksonville bid without anything more than mathematical computation?

A. No, sir, on the face of it it is not clear to me, because in these cases we have only considered the commercial freight charges added to the base price, whereas to reach a real conclusion, I think you would have to put in your land grant rate.

2433 Q. If you want me to go through all of these decimals—I have got them here just the same and it will take me that much more time—but the principle is the same, Mr. Hayghe. I am trying to find out whether if you were submitting a bid from Tampa, from the Tampa mill, or from Boyles mill, you would submit a bid at 43 cents higher per barrel to the government when you knew that Jacksonville was submitting one at 2.52?

A. I think I answered that you would not have any idea of securing the award.

Q. I am trying then to bring out from you whether or not it was necessary for these mills to have collusion as to the 2.52, or whether they could arrive at these figures by the mathematics which you and I have worked out fairly together?

Mr. Wooden: Your Honor, I think the question is objectionable as calling clearly for a speculative opinion of the witness about which he can really know nothing.

Examiner Norwood: I think it is not a question but merely an explanation.

By Mr. Leisure:

Q. Mr. Hayghe, will tell me whether or not it is clear to you that Boyles and Tampa and Clinchfield bids on this conputation might not be submitted at 2.52?

2434 A. Yes, it might.

Q. In fact, Mr. Hayghe, is that not exactly what would happen if these other mills had the information which you and I have just been discussing?

A. I presume that would be the case, yes, sir.

Q. Now, taking up another subject with regard to the same bids, I think you said as to 384-A—well, without geting into what you said—take that number 2.01175 as coming from Tampa and one of $1.475 as coming from Boyles, you of course realize that those are not quoted prices there, Mr. Hayghe? You realize that those are just the mill nets? I just wanted to get an explanation of why you used them.

A. Did you say 334-A?

Q. Yes.

A. I do not see those identified on 334-A.

Q. Apparently there are two exhibits marked 334-A. I am talking of this one (indicating).

2435 Examiner Norwood: Let the record show that, in regard to Exhibit 334, there are two exhibits marked "A" and they are now being marked A-1 and A-2 respectively. A-1 is the invitation No. 5667-U and A-2 is the tabulation shewing the shipping points and freight rates and is dated 12-4-37.

By Mr. Leisure:

Q. Mr. Hayghe, I am merely trying to find if your testimony coincides with the exhibit. As I understand, Mr. Wooden in examining you, asked you about the quoted prices and I believe your exhibit shows that these prices were merly carried on the exhibit as mill prices.

A. On this 334-A-1?

Q. Yes.

A. Value at the mill.

Q. You do not want the record to show that you carried those as prices quoted by the mill?

A. No; that was simply the value at the mill by deducting from the f.o.b. destination cost the commercial freight rate per barrel.

2436 Mr. Wooden: You mean the f.o.b. destination price?

The Witness: The f.o.b. destination price in that particular instance.

By Mr. Leisure:

Q. Of course, in discussing the Jacksonville base price, you understand I was talking about the price figured from Jacksonville and not that the bid came from Jacksonville?

A. Of course we had no bid from Jacksonville.

Q. Are you familiar with the situation in Florida that some of the base prices are made to meet foreign competition?

A. Only from hearsay.

Q. Does your knowledge go to the extent of knowing that a price base is placed at Jacksonville for the purpose of meeting foreign competition?

A. No, sir; it does not.

Q. The other day we were talking about swapping bills of lading. I do not think the record is entirely clear as to just how that is done and why it is done. Would you mind explaining it to us, Mr. Hayghe?

A. Do you mean converting a commercial bill of lading into a Government bill of lading?

Q. Yes.

A. Well—

Q. How did it originate, if you know?

2437 A. It originated for one purpose—of expediting the movement of Government property. A contract may be placed with a vendor and, under ordinary circumstances, he would have to wait to ship until he received a Government bill of lading. If the ordering office desires that shipment to move more promptly than that, they will simply wire the vendor to ship on commercial bill of lading endorsing it to show Government property, this bill of lading to be converted into Government bill of lading at destination. At the same time they will send a Government bill of lading to the consignee. Upon receipt of notice of arrival of the shipment at destination, the consignee will simply take his original Government bill of lading to the freight office and attach it with the original commercial bill of lading to show delivery.

Q. Did the Government also ask to have that done where land grant freight problems were involved, so that it could take title at the point of shipment?

A. You have reference to f.o.b. destination contracts, now?

Q. Yes.

A. Yes, an attempt was made to do that.

Q. It was more than an attempt?

A. It was actually done in some cases.

2438 Q. And discontinued later?

A. Yes.

Q. Do you remember whether or not the manufacturer said it was illegal and did not want to pursue it any further?

A. No.

Q. Why was it discontinued?

A. It was discontinued at the instance of the rail carriers.

Q. Do you remember the facts?

A. Yes, I do. There were some cases of lumber in the State of Colorado which were the first ones brought to our attention, involving an f.o.b. destination contract, but on which the State Procurement Office issued government bills of lading to cover. The government bill of lading has on it what is termed a certificate of the issuing officer on which there is shown the contract purchase order number and f.o.b. point. These government bills of lading covering the shipments I just referred to—when they arrive in the accounting office of the carriers disclosed the fact that the f.o.b. point was the destination of the shipment. The question was raised by the delivering carrier as to the propriety of according land grant rates with respect to such shipments.

We took the matter up and, after considerable research, reached the conclusion that it was an improper procedure and ordered it discontinued.

Q. Do you remember the shipper of that lumber?

2439 A. The contractor?

Q. Yes.

A. I will not say that this is actually the company, but the name Wheeler Lumber Company occurs to me at the moment. Whether it was in connection with these instances or not, I could not say.

Q. Do you remember the exact date of that or the approximate date?

A. No, sir; it was not far in advance of the date of our S. P. O. bulletin No. 72, which I believe was February 6, 1937. I have a copy of that with me this morning.

Q. Was that the situation that you had reference to the other day when you said this swapping of bills of lading led to considerable embarrassment or some such language as that?

A. That is where it originated.

Q. Is this the situation you had reference to?

A. It was the lumber in the State of Colorado.

Mr. Wooden: The witness said S. P. O. Bulletin 72 of February 6th. I think it already appears in the record as January 6th.

The Witness: I must explain this date on here. This is January 6, 1936. As a matter of fact, it went out February 6, 1936, and the copy from which this was made had not been changed. As a matter of fact, the
2440 bulletin was put out on February 6th.

(Discussion off the record.)

By Mr. Leisure:

Q. When you just referred to f.o.b. destination, did you mean destination cost?

A. No, sir; I mean free on board cars at destination. That is a transportation term.

Q. And the government figures the destination cost by adding the transportation?

A. Yes, sir.

Q. That would be a destination cost?

A. The reason I made the difference was that in the bid we have here we have a government destination cost which is different from the f.o.b. destination. That is the reason I was a little technical there.

Q. Mr. Hayghe, the other day Mr. Paulson suggested to you that there was a formula by which the dealers could be protected and still the direct sales could be made. Do you remember that suggestion of Mr. Paulson?

A. I do.

Q. And you said you considered it and then nothing was done about it or something to that effect?

A. That is right.

Q. And that formula consisted of adding the dealer's commission to the bid as suggested by Mr. Paulson?

2441 A. To his mill price; yes.

Q. Did you consider in that case, where you had, say, four dealers in the same town—

A. (Interposing) No, we did not consider that particular angle.

Q. Had you considered how the government was to determine which dealer was to be the favored dealer?

A. No, that was something that would be of course up to the cement manufacturer himself.

Q. Do you, as an expert in this field today, feel that that would be a feasible solution of this problem?

A. I think the fact we discarded it probably is evidence that we did not consider it practicable of application.

Q. Would or would not such a formula, in your opinion tend to eliminate competition between the dealers in a city?

A. That would depend, I think, upon what practice was adopted by the manufacturer in such a case.

Q. In selecting the favored dealer?

A. Yes, sir.

Q. Now, on another subject you were testifying, Mr. Hayghe, about a letter from the Procurement Division and which was sent out to the State officers. Have you got a copy of one of those letters with you?

A. What particular letter do you refer to, please?

Q. I just made a note here on my pad while you were testifying, and it refers to a letter sent out by the

2442 Procurement Division to the State officers.

A. Was that a bulletin?

Q. You asked them to send in data about their bids. Do you remember that testimony?

A. An identical letter—I believe the date was November 22—

Q. (Interposing) Have you got such a letter here?

A. No, sir; I do not have such a letter with me.

2443 Q. Would you be willing that we should see such a letter and look at it?

A. So far as I am concerned there is no objection.

Q. Thank you. Now, I think you said that in certain cases you had rejected bids because they contained what we call a control clause, or what you term a control clause?

A. Yes, sir, there was one instance in which we did do that.

Q. Do you recall at whose suggestion that was done?

A. At whose suggestion?

Q. Yes, sir.

A. I am not quite sure. Since that was done the gentleman in charge generally of the purchase procedure in

the State Procurement Offices, has gone on vacation, Commander Eagle, and whether it was he or whether it was his substitute, I could not say at the moment.

Q. Do you know whether or not he had any contact with the Federal Trade Commission with respect to that before he did it?

A. I don't know, no, sir.

Mr. Wooden: Your Honor, I am just as willing to admit for the record right here and now that we asked the Procurement Division of the Treasury to send out such a letter seeking such information, and we would be very glad to provide a copy of it if you want it.

2444 Mr. Leisure: I thought that was the fact. I merely wanted the record to show it, Mr. Wooden. I would like to have a copy.

The Witness: I will be glad to furnish it, yes.

By Mr. Leisure:

Q. Now, Mr. Hayghe, on another subject. You testified at some considerable length, being questioned by Mr. Wooden, as to how you could have saved money on certain purchases had you been able to purchase from mills located on roads that had land grant freight rates available to you. The savings which you computed for Mr. Wooden in each case were figured—was it or was it not—on the assumption that the mill would quote the same price in every market?

A. No, sir. I believe in those cases it was based upon the assumption that the f. o. b. destination price of the mill or the total of the amount the mill was willing to accept at the point of shipment plus the commercial freight charge.

Q. How could you possibly figure it unless you took some definite figure as to the price that the mill would quote and you gave him certain definite savings that you could make per barrel?

A. Well, we took the mill's f. o. b. destination price.

Q. Yes.

A. And deducted from that the commercial trans-
2445 portation cost per barrel, the result being as I assumed, what the mill would under such a bid be willing to accept for the cement at the shipping point.

Q. Exactly. Now, suppose you had a case such as the ones that you and I discussed a moment ago where all of the mills bid on a base price that was based on meeting foreign competition at a very low price. Do you think

it would follow that these mills would sell generally over the country at that low price which was made to meet foreign competition?

A. Well, I could not testify as to that, but I think the actual price quoted less the commercial freight charge which a mill would be compelled to pay of course, if the bid had been awarded that way, would be all that they would get at the mill for the cement.

Q. And if they quoted that way, you would have the saving which Mr. Wooden asked you about?

A. By the use of the benefits derived from the land grant rate.

Q. If they quoted as you stated?

A. That is true.

Q. Now, I believe you said there was an instance in Georgia where arrangements were made to allow the government in dealing with mill, to take title direct from the mill, is that correct?

A. No, sir, not exactly. They did not take title 2446 at the mill. Those were cases—

Q. (Interrupting.) Was the shipment made direct?

A. The shipment was made direct on government bills of lading. Cases similar to the lumber cases in Colorado.

Q. I do not want to be technical, but you are not making any point about their not taking title at the mill, are you? They could not ship on government bill of lading unless they did take title, could they?

A. They actually did, and that is the reason we stopped them.

Q. They actually shipped on the land grant roads without taking title at the mill?

A. That was it.

Q. And collected the land grant freight rate?

A. In a few instanees they did, before we stopped the practice—well now, pardon me please. I am not prepared to say whether they did or did not. It is possible when the carrier's transportation bill came through in these particular instances, that the carriers denied the benefit of the land grant rates. I would not like to say that they actually took the benefit of it.

Q. It would be natural that they should unless title was taken at the point of shipment?

A. It would be natural that they should do so, because the bill of lading would reflect the f. o. b. point.

2447 Q. Mr. Wooden in questioning you about Exhibit 336 brought out the fact that certain bids were identical. Will you just look at it and tell us whether or not the conditions of sale named there by the different bidders were also identical?

A. The conditions of sale?

Q. Yes, the conditions.

A. (Examining papers.)

Q. Perhaps I might save time, Mr. Hayghe. Just look at it and tell me whether or not it is a fact that four of the bidders guaranteed the buyers against a price advance before delivery?

A. In the case of the Pennsylvania-Dixie, there is a provision to that effect.

Q. If you can just glance at them and see if there are not four of them out of the entire group?

A. The Universal Atlas bid contains such a clause; the Lehigh Portland appears to have such a provision in there.

Q. Now, as to the Universal Atlas, while you have it in your hand, it also waived in paragraph 5 of the invitation, as to adding any federal tax, did it not?

A. Paragraph 5 of the invitation?

Q. Did it not waive paragraph 5 as to adding any federal tax? I think I have those checked there.

A. (Reading.) "The government may eliminate paragraph 5."

Q. The Florida did not insert either of these con-
2448 ditions in its bid, did it?

A. It does not appear to be in the Floria bid.

Q. So on all these biddings, if you look at the various conditions, in order to save time without pointing out any great number of these specific instances, if you look at the various conditions of the bids, the bids were not identical as to at least incidents of price?

A. As to the conditions they were not identical.

Q. Now, as to these purchases by your department over a period of time, I believe you said between July 1, 1935, and November 30, 1937, some 15,000,000 barrels have been purchased by the Procurement Division?

A. Yes, sir.

Q. That is approximately two and a half years or twenty-nine months?

A. Yes.

Q. Without spending undue time on them, those clauses as to which I was just questioning you, gave the government the benefit of any price decline which might occur, did they not?

A. To the best of my recollection they contained nothing that would prevent the government taking advantage of a price decline.

Q. In gathering these figures on this 15,000,000 barrels that were sold, did you gather any information as
2449 to the number of jobs that those sales covered?

A. No, sir, we did not.

Q. Or as to what the locations were?

A. No, we simply established the total number of barrels purchased during that period of time.

Q. Can you tell me where we can obtain that kind of information, the number of jobs, the kind of job, whether the business was dealer business or mill business?

A. Only from the State Procurement Officers themselves, and there are some 49 of them.

Q. There is no central place here in Washington where we can get that information?

A. To the best of my knoweledge there is not. As a matter of fact, we could not determine here the total number of barrels purchased; we had to ask the individual offices.

2452 By Mr. Zimmerman:

Q. It does not make any difference whether the mills bid an f. o. b. mill price, a destination cost price or a delivered price; the one thing that your department is interested in is getting the cement to the job at the lowest
2453 cost that can be obtained, is not that so?

A. Essentially that is out duty.

Q. And even if there was an f. o. b. mill price bid in order to make a comparison of the bids, you would always add the cost of transportation to the job, would you not?

A. Yes, sir.

Q. Now, if some of the bidders are located so that they may have the right to ship with land grant rates to destination and others are not; that is, they have no location on a road that affords them the opportunity to do anything else except get their cement to destination at the commercial freight rates, can you see any good reason why all of the bidders should not equalize their bids so as to equalize freights?

A. I think any bidder should have the opportunity to equalize all differentials that might be involved, freight rates or otherwise.

Mr. Zimmerman: That is all.

Redirect Examination by Mr. Wooden.

Q. Mr. Zimmerman just stated that it made no difference to you whether the mills bid f. o. b. mill, destination, or government destination cost; that your only concern was to get the lowest delivery cost to the government?

A. The lowest possible cost.

2454 Q. In the process of getting the lowest possible cost, does it make any difference whether the mills bid f. o. b. mills or not?

A. It does.

Q. In what way?

A. Because in cases where land grant savings are available we can take advantage of those differentials.

Q. If they bid f. o. b. mills?

A. Yes, sir.

Q. And unless they bid f. o. b. mill, do you see how you can always be assured of getting the benefit of the land grant rates?

A. We could not be sure.

Q. Let us work back into the cross examination by Mr. Leisure. Was this clause sometimes referred to as a guarantee against decline and sometimes a guarantee against advance? I would like to have the record clear as to what it is?

A. I am afraid I cannot answer that.

Q. Could you, by referring to the bids?

A. Yes.

Examiner Norwood: Maybe the contract guarantees against advance.

By Mr. Wooden:

Q. In the case of a contract covering a specfic rate on cement, what meaning would a guarantee against ad-
2455 vance have? Everything is settled, is it not?—the price and terms of purchase. Then a guarantee against advance in that price seems to me to be a contradiction in terms.

A. If the contractor agrees to deliver for a certain price, of course he could not ask for any more.

Q. A guarantee against advance would be simply a nullity?

A. He certainly could not collect more than his bid price.

Q. Of course a guarantee against decline would ordinarily be much more common than guarantees against advance?

Mr. Leisure: Here is the actual contract, Mr. Wooden. (Exhibiting paper.) The contract assumes in all these big jobs they will all be shipped in carload.

Mr. Wooden: These are not all big jobs.

By Mr. Wooden:

Q. Now, what is the clause in question? Let us make sure it is a guarantee against decline or against advance. Which it it?

A. May I quote from this?

Q. Yes.

A. "The buyer shall never be required to pay, with respect to any shipment of cement hereunder, a price in excess of the price at which the seller, at the time of such shipment, offers to make current sales of cement at the place of delivery herein specified."

Q. After agreeing to sell at a definite figure, then 2456 the agreement is that you shall not have to pay any more?

Examiner Norwood: What are you reading from?

The Witness: I am reading from Exhibit 336-E.

"The buyer shall never be required to pay, with respect to any shipment of cement hereunder, a price in excess of the price at which the seller, at the time of such shipment, offers to make current sales of cement at the place of delivery herein specified."

By Mr. Wooden:

Q. What is the quantity involved?

A. 132 barrels.

Q. I suppose that is more or less a form used whether applicable to a particular case or not?

A. It seems to be a form provision.

Q. Now, these conditions that some had about the waiver of the federal tax: Was there any federal tax at that time?

A. I could not testify as to that.

Q. Was the award made by lot in that case?

A. In this case, I do not have the abstract here and I do not recall having seen this particular one before.

2457 A. The award was made by drawing.

Q. If some of these clauses in the bids of some bidders that have been referred to and that were not in the bids of others constituted any substantial advantage to the Government, why was the award made by drawing?

A. I could merely express an opinion on that. I do not actually know.

Q. Well, let us have your opinion for what it may be worth. You have been asked opinions on other subjects that are much farther away from your general business?

A. I presume that the contracting office assumed that they were not of any particular advantage.

Q. Now, coming to this matter of exchanging bills of lading. You testified in answer to Mr. Leisure's question that the reason for initiating the practice of exchanging bills of lading was to split up shipments or something of that sort?

A. That was one of the reasons.

Q. One of the reasons?

A. Yes, sir.

Q. Then is it a fair statement that your inability to continue the practice resulted in delaying shipments or deliveries?

A. No, sir. In those cases where it is done to expedite shipment, the practice is perfectly proper, because the contract is awarded f. o. b. shipment. It is simply

2458 that the contracting office wishes a shipment to move forward sooner than it could if the shipper had to wait for a Government bill of lading.

Q. Are there some cases where the substifution is still permissible and still practiced?

A. You mean under the f. o. b. origin or f. o. b. destination?

Q. In any case, will you state what they are?

A. Oh, there have been instances in a case of an f. o. b. destination award where it is perfectly proper in that a clause is inserted in the contract under which the Government reserves the right to take title to the shipment at the point of origin regardless of the initial terms of the contract, and of course the seller agreeing to that makes it a perfectly legal procedure.

Q. And the practice conforms to that provision?

A. It has been followed in such cases.

Q. Have you ever seen any stamp on the bill of lading for cement with regard to the matter of title to the shipment and anything about non-diversion?

A. No, sir, I have not.

Mr. Leisure: This is not redirect, Your Honor—well, the witness has answered.

Mr. Wooden: It is based on the cross, I should say, very clearly.

2459 Mr. Leisure: I did not go into diversions.

Mr. Wooden: No, but you went into this question of title. My question involves whether he has seen anything regarding title to the shipments on the bills of lading.

Examiner Norwood: Go ahead.

The Witness: I have not.

By Mr. Wooden:

Q. Certain questions were asked you about a situation or a series of situations assuming Jacksonville as a base. Was Jacksonville a base in any of these concrete cases that you testified about?

Mr. Leisure: If he knows of his own knowledge how the mills arrived at their bid price, I have no objection.

The Witness: I could not say.

By Mr. Wooden:

Q. Do you know whether or not any other base and if so what other bases may have been used in the calculation of these prices?

A. I will have to plead ignorance all the way along the line there.

Q. I thought you would. Now, Mr. Leisure was asking you something about this Groveland, Florida, case—I believe that was the case—in which the State Procure-
2460 ment Officer figured the land grant rates differently from what they later turned out to be.

A. That was the case, but the State Procurement Officer did not figure the rates.

Q. He got them from you?

A. He got them from our office.

Q. In other words, you figured the rates differently at different times?

A. That is true.

Q. And you explained the reason for that?

A. Yes, sir.

Q. Would you say that that particular case illustrates your general testimony of a day or two ago to the effect that there is no certainty about what the actual land grant rate will be when it comes time to settle with the railroads?

2462 Q. Now, this control clause calls merely for the deduction of the land grant rate for invoicing purposes, does it not?

A. No, it calls for the deduction of the lowest rate, commercial, land grant or special.

Q. Doesn't that mean that it is always either the land grant or the special, because they are always lower than the commercial?

A. It is possible by means of an error for the special rate to be higher than a commercial rate, but there have been instances where the special rate has been quoted higher than a commercial.

Q. By error?

A. They are very few and far between.

Q. In effect, then, the control clause provides for the deduction of the lowest rate, which is the land grant or the special rate ordinarily?

A. As a general proposition; yes, sir.

2463 Q. And in endeavoring to comply with that control clause, you merely deduct the best information you have regarding the probable land grant rate?

A. All rates are quoted by us with the understanding that they are computed from the best information available to us at the time.

Q. Have you ever had any claims made because the figure used in calculating the mill price for invoicing purposes turns out to be different from the one that is the basis of actual settlement?

A. Claims made by whom?

Q. By cement shippers.

A. To the best of my knowledge, there have been no such claims.

2464 Q. Now, Mr. Leisure gave you some illustrations about concerns that might have bid at destination $2.56 against what was actually bid of $2.52 or something like that. As I understand it, the mills all bid $2.52 in that case?

A. F. O. B. destination.

Q. Yes, f. o. b. destination. The mills were rather widely scattered as to places of shipment?

A. Yes, sir, they were.

Q. And as to variation in freight, whether figuring either commercial or land grant?

A. Considerable variation.

2465 Q. You answered very obviously that if some quoted $2.56 or some quoted $2.52, only the $2.52 bid could be considered.

A. I think that is obvious.

Q. Suppose some had quoted $2.51?

A. It would be the low bidder.

Q. Suppose the nearest bid to destination was a bid of $2.51: It would still have been the low bidder?

A. Yes, it would still have been the low bid.

Q. And it would have had a very much less transportation charge than the more distant mills?

A. Commercial; yes.

Q. Of course the land grant rate, at a distance, might make it lower than the nearby commercial rate?

A. That is true.

Q. Now, Mr. Leisure asked you whether, in the case of the $2.52 bids and the hypothetical $2.56 bids, whether the $2.56 people would not be under the necessity of meeting the $2.52 delivered price by equalization without, he said, the necessity of doing anything other than calculating the freight if they knew the base from which to figure. Do you remember that?

A. I remember the question; yes.

Q. I believe you said you presumed that could be done?

A. To the best of my recollection, that was my reply.

Q. Now, I will repeat my question of a while ago,

2466 as to how in your experience as a traffic man, the mills could know in advance what the applicable land grant rate is to be used, in getting the Government destination cost.

Mr. Leisure: If Your Honor please, he has asked the witness a series of questions on commercial rates. Now he asked him how they could know what the land grant rate was in connection with those bids.

Mr. Wooden: This is devoted entirely to land grant rates and not commercial. The commercial rates are rates that are on file.

Mr. Leisure: I asked if it was not a question of certain commercial rates being used, and the witness interrupted me.

Examiner Norwood: You asked some questions about computing this, and I think he has a right to go into that. Objection overruled.

The Witness: In order to determine a land grant rate you must have available the carrier's division sheets or percentage issues or whatever they might be known as. Such information is usually considered confidential by the carriers. They furnish that information to certain of their competing carriers. They do not have to furnish it to any of them if they do not want to. They furnish it to Government officers because it is an absolute essentil in
2467 order to work out the land grant rate.

Essentially it is not available to commercial shippers, but a well acquainted traffic manager has various means of obtaining that information from various sources. He may not receive the division sheet himself, but he should have no difficulty, if he is well connected, in obtaining a particular basis for dividing.

By Mr. Wooden:

Q. But that, as I understand your testimony, is subject to later change in the actual settlement?

A. Oh, by all means; yes.

Q. Mr. Leisure asked you one or two questions which I thought went beyond your experience and got into the realm, you might say, of economic theory. So, I suppose I am entitled to do a little of it myself.

Mr. Leisure: Is this a question?

Mr. Wooden: He asked the witness' opinion about the competitive character or aspect of the situation, as he saw it. I am going to hark back to an illustration that Mr. Leisure himself once gave about a couple—

Mr. Zimmerman: Just what is the question?

Mr. Wooden: I am coming to it—about a couple of foot racers competing with each other who come out in a dead heat.

By Mr. Wooden:

2468 Q. I will ask you this: Suppose you had half a dozen foot racers; that each started from places perhaps several hundred miles apart and they all got to the same destination in a dead heat: Would you think they were competitive or not?

A. I would say a lot of them would have to be faster runners than others.

Q. Suppose it happened not once but time after time: What would you think?

A. It would look like the fastest runner was always put on the longest journey (laughter).

Q. And the fellow that was nearest would go very slow and the fellow at a distance would have to hump himself a lot?

A. I think that is perfectly obvious.

Q. Now, a day or two ago Mr. Leisure asked you about the effect upon the employment resulting from buying your cement through dealers.

A. Yes, sir.

Q. Have you had any cases come to your attention where your W. P. A. projects were curtailed or abandoned because of the price of cement?

2469 The Witness: I could not say definitely whether one of those cases actually came to my attention or not, but I do have a hazy recollection of something of the sort, but where it took place, I could not at the moment testify.

By Mr. Wooden:

Q. Now, one further question on that point, or a simliar point: Can you state to what extent the payment for cement bought through your Procurement Division is made out of federal funds and out of state funds?

A. I would rather not testify to that because I really do not know.

2470 Mr. Wooden: All right. Mr. Paulson has one or two questions.

By Mr. Paulson:

Q. Your Honor, S. P. O. bulletin 72 has been mentioned several times, and I think it would be proper to introduce it at this time so that some of these matters can be more accurately displayed in the record. There has grown up more confusion and more confusion about the use of this control clause particularly around the meaning of S. P. O. 72.

Examiner Norwood: Did the witness identify it as such?

Q. Mr. Hayghe, I hand you herewith a paper marked for identification Commission's Exhibit 374. What is that?

A. That is a copy of S. P. O. bulletin 72 with the date shown as January 6, which is in error. It should be February 6, 1936.

Mr. Paulson: I offer Commission's Exhibit 374 in evidence.

Since that is a copy of what later was printed ma-
2471 terial, we could stipulate that we will substitute the actual bona fide copies made should that supposition appear to be erroneous.

2473 (COM. EX. 374 was offered and received in evidence.)

Q. Mr. Hayghe, I hand you Commission's Exhibit 375-A and B for identification, and will you state what that is?

A. This is supplement No. 1 to the Procurement Division SPO Bulletin 72, dated March 11, 1936.

(COM. EX. 375-A and B was offered and received in evidence.)

2474 Q. Did you, Mr. Hayghe, have anything to do with the preparation of SPO Bulletin 72 which is the subject-matter of Commission's Exhibit 374?

A. I composed it, yes, sir.

Mr. Paulson: I believe, Your Honor, that it is necessary to read SPO Bulletin 72, at least in part so that we can question the witness.

Examiner Norwood: Make it as short as possible in reading the excerpts. Go ahead.

Mr. Paulson (reading): "There has been brought to the attention of the Procurement Division the fact that in numerous instances invitations to bid are issued calling for delivery f.o.b. destinations with clause inserted providing for deduction of commercial freight charges from contractors' invoices and the issuance of Government bills of lading to cover the movements."

By Mr. Paulson:

Q. Was that your practice, Mr. Hayghe, at one time to issue invitations for bids calling for delivery only f.o.b. destination?

A. No, it was not the practice. In numerous instances it did happen, but it was not the general practice.

Q. But in some instances it did happen?

2475 A. Yes.

Mr. Paulson (continuing): "In some cases, materials have been purchased f.o.b. destination, moved on

commercial bills of lading and upon arrival at destination commercial bills of lading were converted into Government bills of lading. The purposes of the offices which have followed these practices has been the reduction in transportation costs through the medium of deductions account of land grant from commercial rates."

By Mr. Paulson:

Q. Can you state before I continue the reading, Mr. Hayghe, whether or not this SPO Bulletin is confined entirely to that particular practice which is specified in paragraph 1?

Mr. Leisure: I think the document speaks for itself.

Examiner Norwood: I think so.

By Mr. Paulson:

Q. Will you explain in your own words, Mr. Hayghe, what the situation was that confronted you when the railroads raised this question?

A. It resulted in the suspending of the payment of the transportation bills. As a matter of fact, while I can not positively state this, I understand there are numerous bills still under investigation, under correspondence between the General Accounting Office and the railroads as to whether the land grant is available in connection 2476 with those shipments.

Examiner Norwood: What, particularly, was the question you are referring to that the railroads raised?

The Witness: The availability of the land grant on shipments moved under these circumstances; the legality of the deductions.

Examiner Norwood: Under what circumstances?

The Witness: A purchase f.o.b. destination and shipment on a Government bill of lading.

Examiner Norwood: Where the purchase is direct from the mill, you mean?

The Witness: No, sir—well, direct from the vendor, yes, sir.

By Mr. Paulson:

Q. Now, supposing you had issued invitations calling for bids both ways, f.o.b. destination and f.o.b. shipping point. Isn't the position of the Procurement Division that under bids of both types, the title passes at destination?

2477 A. It is the position of the Procurement Division that in the case of an f.o.b. origin purchase, the title passes at the point of origin; in the case of f.o.b. destination purchase, it passes at the point of destination.

Q. That brings us into the question then, whether or not the alternate bids that you were asked about as illustrated by some of the exhibits that have been put in here, the alternate No. 2 is in fact an f.o.b. origin or an f.o.b. destination bid, and I am asking you now how the Procurement Division considered such bids, whether they considered them as f.o.b. origin or f.o.b. destination from the standpoint of shipping rates?

A. By means of the procedure offered and accepted, my opinion is that they would become f.o.b. origin bids.

Q. That is the position you took in S. P. O. bulletin 72, is it not?

A. I did not gather that.

Q. Let me read the second paragraph of this and see if we are placing the proper construction on it here: "Efforts of State Procurement Offices to reduce costs by proper means are commendatory and are encouraged, but there is serious doubt of the propriety of the measures described in the preceding paragraph. Deductions account of land grant can be made only on transportation charges on government property. The title to property purchased by the government under contracts call-
2478 ing for delivery f.o.b. destination does not pass to the government until arrival of the material on cars at the usual place of delivery at the destination named in the contract. Any attempt to change the terms of purchase after the award of contract for the purpose of securing benefit of land grant deductions on transportation charges is subject to misinterpretation and it must not be permitted." Up to that point, is there any question but what that deals exclusively with the bid which called for invitations f.o.b. destination?

A. That deals exclusive with bids f.o.b. destination.

Q. So far nothing is said about the other type of bid?

A. No.

Q. (Reading) "At best, there is reasonable doubt that deduction of commercial freight charges from vendors invoices and the issuance of government bills of lading, or substitution thereof for commercial bills of lading where invitation to bid and award of contract provide for

delivery f.o.b. destination, has the effect of vesting title in the government at the point of origin." Does that mean that you did not determine definitely or take a definite stand that in that type of situation you would not get title at the mill?

A. In an instance of that sort, we felt there was serious doubt that we would.

Q. There was some doubt in your mind as to
2479 whether or not title passed at the mill or destination, even though you asked for bids f.o.b. destination; isn't that what that means?

A. That is true.

Q. (Continuing) "The practices heretofore followed and described herein will be discontinued immediately. For the future, State Procurement Officers will make provision for award of contracts f.o.b. point of origin in cases where economy can be effected in transportation costs by means of land grant deductions from commercial rates. In cases where material will originate at and be destined to points between which no land grant is available, purchases will be made f.o.b. destination, shipments to move on commercial bills of lading and transportation charges to be paid by vendor." What do you understand that to mean?

A. It means that if there is no advantage to be secured through land grant, and there is no advantage in accepting an f.o.b. origin bid and paying the commercial freight charge, that we would let delivered.

Q. And on the contrary, when there was an advantage?

A. Where there was an advantage, we would let f.o.b. origin.

Q. So you left wide open the question of where title passed on an f.o.b. destination bid in the case of an f.o.b. government destination bid, is that right?

2480 A. That particular type bid was not under consideration at the time this bulletin was issued, but the provisions of the bulletin were extended.

Q. In other words, you left it wide open? You did not cover it?

A. That is true.

Q. It does not say anything about where title passes in the case of a government destination cost bid?

A. There is no mention made of such a bid in that bulletin.

Q. Now, in Commission's Exhibit 375-A and B, which is a supplement to S.P.O. bulletin 72, issued on March 11, 1936,—what occasioned the issuance of this supplement?

A. The substance of that supplement was an innovation in government purchasing. Ordinarily, the lowest bid would govern. In this particular supplement we provided that even where you had available land grant between origin and destination and a saving by means of the application of the land grant rate, that it did not amount to more than 5 percent, we would consider it more economical to purchase delivered. That was an arbitrary margin established by us; there was no way we could prove that it would be more economical, but in view of the nature of the program, we had to do a lot of things expeditiously.

2481 The matter was submitted to the office of the Comptroller General informally before we put it into effect, and no objection was raised. We were told that it was a matter for administrative discretion, and the Comptroller General's Office did raise no objection to such a provision.

Q. So that in this supplement you did not rule upon the question of where title passes or the right and wrongs in attempts to get the manufacturers to ship on a Government bill of lading?

2482 The Witness: No, sir, we did not.

2483 Q. It appears from the evidence that your State Procurement Officers were very anxious, very diligent and very serious about trying to save money for the United States Government and attempted to do so by getting the lowest freight rate available and taking advantage of the lowest available freight rate. Is that correct?

A. That is correct.

Q. Can you tell about how many of your State Procurement Officers made some attempt along that line?

The Witness: The State Procurement Officers made that effort. That was a part of their duties, and toward that end, we established in most of the offices, a traffic clerk, appointed from Washington, selected by myself so we would have someone in each of the offices

2484 equipped and qualified to go into such matters on the question of savings in transportation costs.

2486 Q. Now Mr Leisure, in cross-examination, asked whether or not you seriously considered or thought there was some way to work out a way whereby dealers

could get their commissions and shipments could be made to originate at bidders' mills. Along that line, Mr. Hayge, I think possibly it is necessary to look at the over-all picture for just a moment.

When the Procurement Division was first organized, were you able to get bids from manufacturers in all States?

A. You mean the State Procurement Offices were organized?

Q. When the Procurement Division was set up in 1935.

A. The Procurement Division, as such, was set up before that.

Q. When it assumed its enlarged functions.

A. Under the emergency relief program?

Q. Yes.

A. There were many cases where we received bids from manufacturers.

Q. Can you state whether you received bids direct in all States up to a certain point?

A. No, I could not make a general statement on that.

Q. At what time did this practice and policy of the cement manufacturers of refusing to bid direct originate?

2487 The Witness: To the best of my knowledge my tes-
2488 timony was from the records. Naturally I personally did not issue any invitations or award any contracts. I was simply testifying from the records.

By Mr. Paulson:

Q. At any rate, Mr. Hayghe, are you familiar with the situation now, or familiar enough to say as to whether or not the Procurement Division receives direct from manufacturers bids?

A. On cement?

Q. Yes.

A. To the best of my knowledge we now do not receive bids direct from manufacturers.

Q. Now, as a freight man, what does that mean in relation to getting the advantage of the land grant rates?

A. Well, it means that we must pay the bidders—the dealers in other words,—a price which would include the cost of the cement to them at the mill, the cost of moving it commercially from the mill to their point of storage or wherever it was to be used,—in some cases it is shipped direct to the project—plus the dealers' commissions. There may be other factors added of which we know nothing.

But, obviously, those three factors are essentially a part of any dealer's bid.

Q. The vast bulk of your purchases—15,000,000 barrels I think you said approximately—on the vast bulk of
2489 those purchases you, therefore, had to pay the commercial freight rate rather than the land grant rate?

2490 The Witness: Inasmuch as the information received with respect to these purchases shows that the greater part were confined to dealers, I would say that, on the majority of it, we were compelled to pay the commercial freight charges rather than the land grant rates.

2494 Q. Now, when we recessed, Mr. Hayghe, we were about to discuss the question of whether or not it would be possible to both give the dealers the benefit of handling cement as well as also at the same time let the Government receive the benefit of the land grant rates.

On cross-examination there was an attempt made to point out that that was an impossibility, because there would not be a chance for dealers to compete. Supposing, Mr. Hayghe, invitations had been issued and you had received
2495 bids from dealers and the award had been made. Would you say then that the dealers had been in the picture by that time?

A. I would say they would be; yes.

Q. Each would have a chance to compete for the business?

A. Yes.

Q. Then, can you see any way by which the Government could take advantage of the land grant rates after the procedure has advanced to that stage?

A. I think an arrangement could be made properly between the Government and the dealer to move the property on government bills of lading from the producing point to secure the benefit of the land grant rate.

Q. Would it have any effect on the dealers' position, as you see it?

A. I would say it would not affect it at all, because if he actually ships he would have to pay the freight charges himself and I suppose it would be immaterial to him whether he paid the railroad's freight charges or permits the Government to deduct it from the invoice. It would be the same amount in either instance.

Q. Do you happen to know whether your State Procurement Officers have attempted to secure shipments on Government bills of lading under those circumstances?

A. Yes, there were instances.

2502 The Witness: These are copies received in the Procurement Division at Washington from the State Procurement Office—

Mr. Leisure: May the record show what exhibit he is referring to? You handed him two exhibits.

Mr. Paulson: No, just one exhibit.

The Witness: Exhibit 364-A to CC.

Mr. Paulson: We offer these in evidence.

Mr. Leisure: Did you ever see the originals of any of these documents and, if so, what ones, Mr. Hayghe?

The Witness: I saw the original of 364-G; 364-H is a copy of a telegram sent by me to the State Procurement Officer; 364-J is also a copy of a telegram from my office to the State Procurement Officer and 364-AA—the original of that came over my desk. As to the others, I could not positively testify I have seen the originals. I may have.

2503 Examiner Norwood: Are the originals available?

The Witness: Yes, sir.

Examiner Norwood: Then, we can not receive these until you show the originals are not only not available, but these are copies.

2506 By Mr. Paulson:

Q. Can you, Mr. Hayghe, as a traffic expert, see any reason why manufacturers should refuse to allow the use of a government bill of lading after the award has been made to a dealer?

Mr. Leisure: I do not think there has been any testimony to the opposite effect. I object to the question. It would not be material if there had been.

Examiner Norwood: Has any manufacturer given you any reason for that?

The Witness: No, sir, I do not know of any reason for not doing it.

By Mr. Paulson:

Q. From a freight angle, in other words?

A. From a freight angle, no.

Q. There was some testimony when you were on the stand before, Mr. Hayghe, regarding whether or not land grants had been liquidated. Can you state whether land grants have been liquidated?

The Witness: I can say that they have not been
2507 liquidated.

By Mr. Paulson:

Q. Is there much outstanding, would you say? Have you ever made a report on that, Mr. Hayghe?

A. I have a very complete report on it.

2509 Q. I ask you what Commission's Exhibit 376-A to X is?

A. This is a report of research conducted by members of my organization with respect to the grants of land, the values, and the return therefrom in the shape of deductions on account of the land grants.

2513 Q. Mr. Hayghe, can you state from your knowledge of the subject whether or not land grants have been repaid?

A. They have not been liquidated.

Q. What proportion has been liquidated?

A. None. As a matter of fact, according to the figures compiled and as shown in this report, the obligation of the carrier is increasing each year rather than being reduced.

Q. Can you state briefly why that is?

A. Well, that is based upon the assumption that the government is entitled to a reasonable return for a capital investment of approximately $192,000,000 represented by the average selling price per acre of all of the land granted during the years in which they were granted.

Q. Is it possible then that the land grants will ever be liquidated?

A. It is not possible under that method of computation that they will ever be liquidated.

Recross Examination by Mr. Leisure.

2514 Q. Mr. Hayghe, as to this large amount of cement, 15,000,000 barrels that you were asked about over all of the states of the union,—the land grant rate does not apply to many of those states, isn't that so?

A. I think if you have one of those little booklets, it can be readily shown. Land grant is not available generally east of the Indiana-Illinois state line, south of the southern boundary of Michigan and north of the Tennessee-Mississippi and Alabama state line, or north of the Georgia-South Carolina state line. That is explaining it somewhat crudely, I realize. There are no land grants available in the

states of Texas, Arkansas, Oklahoma, nor in the states of Colorado, Utah and Nevada, and Wyoming. It is therefore available in the balance of the country.

Q. Is is available in Connecticut?

A. No sir, that comes within the excepted states. I said east of the Indiana-Illinois state line and north of these other boundaries.

Q. Is is available in Delaware?

A. No.

Q. In Georgia?

A. In Georgia there is no land grant.

Q. In Maryland?

A. No.

Q. Massachusetts?

2515 A. None.

Q. Indiana?

A. None.

Q. Kentucky?

A. None in Kentucky.

Q. Or Nebraska?

A. There is none in Nebraska.

Q. Nevada?

A. None.

Q. New Hampshire?

A. No.

Q. In New Jersey?

A. None in New Jersey.

Q. New York?

A. None in New York.

Q. North Carolina?

A. No.

Q. Ohio?

A. No.

Q. Oklahoma?

A. No.

Q. Pennsylvania?

A. None.

Q. Vermont?

A. None.

2516 Q. Virginia?

A. None.

Q. Rhode Island?

A. No.

Q. South Carolina?

A. No.
Q. Tennessee?
A. No.
Q. Texas?
A. No.
Q. Utah?
A. No.
Q. West Virginia?
A. No.
Q. Wyoming?
A. No.

Q. In the figures you gave that would add up to about 9,000,000 barrels out of the 15,000,000 you gave as I figure it?

A. How many out of the total?

Q. Nine out of the 15.

A. I could not say without looking at the figures.

Q. We can do that and we need not take your time in doing it. On these jobs, many of the jobs were small jobs in which those 15,000,000 barrels were sold?

2517 A. I presume so. I have no information about it.

Q. And that was done throughout dealers, much of the work?

A. The greater part of the cases, yes.

Q. That is, dealers were equipped to deliver to the job, whereas purchases from the mill would not go directly to the job because the mill had no delivery?

A. I do not think I can answer that.

By Mr. Leisure:

Q. In figuring these land grant rates, when they are finally figured by the Comptroller General, would you say that the Comptroller General was always correct in figuring those rates?

A. Decidedly not.

2518 Q. As to these runners: You and I were not discussing any athletic competition when we were talk-
2519 ing about figuring these amounts; we were discussing mathematics, and that two sets of figures would come out the same whether you started from Kansas City or Oregon or Wyoming; that if you take $1.85 and .67, that would come out $2.52 if you did it 100 times.

A. Yes, sir.

Q. That is, if you figured it correctly?

A. Yes, sir.

2520 *Redirect Examination by Mr. Wooden.*

Q. You testified you did not see, I believe, how cement mill got the information as to land grant rates in figuring their bids.

Mr. Leisure: I do not think he testified to that.

Mr. Wooden: I know that you qualified it by saying that of course some traffic men might get it from the railroad.

2522 Q. In such a case would you expect all the traffic managers of all the bidders to have equal access to that information, or just some particular traffic manager who had a particular entree to the source of information in the railroad company?

A. I think any one who has had sufficient experience in transportation to have reached that position of traffic manager would have equal access to the information.

Q. Suppose one of the mills was not shipping direct over that road: Would it be possible for him to get that information?

A. I think it is possible he could get it.

Q. Do you know anything about whether or not the mills circulate any information among themselves as to the land grant rates?

A. I do not know.

2529 A. BOYD CUSTER, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

I am senior administrative assistant, Bureau of Supplies and Accounts, Navy Department, and have been in that position for about twenty years. The duties of the position are to supervise, administer and advise ways and means of overcoming difficulties in the opening of bids and award of contracts, including the purchase of cement.

Q. Will you describe, in a general way and in
2530 general terms, just how you go about buying your cement?

A. We follow the same order as other items of supplies, of which there are about 40,000 items purchased,

by issuing invitations for bids on forms provided in the Bureau of Supplies and Accounts for the purpose, which are distributed to all prospective bidders from a very broad mailing list maintained for the purpose, and with these forms of invitation is a return and bid. The invitations prescribed and fix the date and hour of opening and they are always opened on that scheduled period.

Q. Do you buy cement direct from the mills or from dealers?

A. We solicit bids from dealers and manufacturers, according to applications that are filed to receive those invitations from time to time. The awards are made to the lowest bidder. That may be a dealer or a manufacturer.

Q. Do you frequently make purchases themselves direct from the manufacturers as the result of such bidding?

A. Yes, I would say more frequently from the manufacturer.

Q. About what quantity of cement do you buy in the course of a year's time?

A. About 100,000 barrels.

Q. I take it that that is an average year's purchase, or what?

A. That is an average.

Q. Where do you have the cement delivered and for
2531 what purposes?

A. Deliveries are made to Navy Yards and stations throughout the United States and it is for general purposes, as cement may be required at those stations for road construction, buildings and for other purposes for which it may be required.

Q. Why do you solicit bids on cement rather than buying in the open market?

A. Because of a fundamental law which requires that all supplies shall be purchased after advertisement and competitive bids.

Q. Do you refer to Section 3709?

A. And Section 3718 of the Revised Statutes.

Q. Do you buy ordinarily all your year's requirements at one letting or how is that handled?

A. We make semi-annual purchases. The requirements are prepared in two, what we call, replenishment periods.

Q. They come at stated intervals?

A. They come at stated intervals.

Q. About certain months of the year?

A. In certain months—in May or June, depending on how promptly we can get out our invitations,—and November and December.

Q. In addition to those lettings on your general requirements, are there some instances where you buy in be-
2532 tween on some special requirements?

A. Occasionally.

Q. Do you ask for bids on cement on a delivered price basis or on an f.o.b. shipping point basis?

A. Both ways, depending on the point of delivery—well, I would say primarily on the point of delivery, with the possibility of receiving the advantages of land grant rates.

Q. Do you get bids on an f.o.b. shipping point basis?

A. Generally not.

Q. When you say generally not, will you explain what you mean?

A. I would say only an exceptional case do we get f.o.b. mill bids.

Q. How long has that been the case?

A. For many years.

Q. When you say many years, what does that mean?

A. Ten years.

Q. Have you, at times, received bids on a so-called Government destination cost basis with a clause or rider to the effect that the Government may determine its cost at the mill for invoicing purposes by deducting whichever freight rate is lower, whether land grant or commercial?

A. Bids have contained a provision to that effect.

2533 The witness identified Com. Ex. 377 A to H as "Schedule 438" invitation for bids on cement for opening in the Bureau of Supplies and Accounts on May 18, 1937. This is the standard form of an invitation for bids on cement. Substantially the same form has been in use since the inception of the Bureau of Supplies and Accounts in 1879.

Mr. Wooden: I offer that for the record.

Mr. Leisure: If your Honor please, I think it would be more pertinent to this trial if some actual case were used. I do not know how someone identifying the form is proper evidence in this case.

2534 Examiner Norwood: We have been receiving evidence regarding invitations and receiving the invi-

tations right along. I do not see any objection to receiving the blank invitation.

Mr. Zimmerman: If he means to show and perhaps he does—I don't know—that this is the same form that was used in all the invitations to bid in this department—

Mr. Wooden: (Interposing) That is my understanding of his testimony already.

The Witness: That is correct.

Mr. Wooden: He says the same form has been used for many many years.

(COM. EX. 377-A to H was offered and received in evidence.)

The witness identified Com. Ex. 384 A to blank as a group of the official records of the Bureau of Supplies and Accounts of the bids received under the opening date of May 18, 1937 on cement, based upon Schedule 438.

Mr. Wooden: Now, your Honor, I want to offer
2535 those papers for the record with the understanding that they may be withdrawn and returned to the witness after they have been subjected to such checking as either side wishes to make, and subject also to the substitution of a tabulation made in the office of the Commission and properly attested to as being based upon the papers.

Mr. Leisure: Could we not follow the usual procedure of having photostats made and substituted, and then we will each have a copy?

Mr. Wooden: I am trying to avoid putting this bulk of stuff consisting of these bids even in as exhibits.

Mr. Zimmerman: Haven't yu got a tabulation?

Mr. Wooden: It is in process, but of course I cannot use it with this witness.

2536 The witness identified Com. Exs. 378-1 to blank, 379-1 to blank, 380-1 to blank, 381-1 to blank, 382-1 to blank and 383-1 to blank as bids on cement at various openings from the official files of the bureau of Supplies and Accounts for the following periods:

"378" is for opening on June 9, 1931;
"379" is for opening on May 17, 1932;
"380" are bids opened on June 6, 1933;
"381" are bids opened June 26, 1934;
"382" are bids opened on May 10, 1935;
"383" are bids opened on May 29, 1936.

Mr. Wooden: Now, Your Honor, I offer all those pa-

pers on the same conditions and subject to the same arrangement regarding return of the papers and the substitution of tabulations, as I did in the case of 384.

Examiner Norwood: Verified copies may be substituted when the respondents have had the opportunity of checking.

2537 Mr. Zimmerman: In view of the voluminous exhibits here, may we reserve our specific objections until we know more about what the nature and purpose of the offer are? It is very difficult, of course, to take a stab in the dark.

Examiner Norwood: I think so.

Mr. Leisure: May I ask the witness a question on voir dire, now?

Examiner Norwood: Yes.

By Mr. Leisure:

Q. Are these all bids covered by the Navy or are these a selected group of bids?

A. Those are a cross-section of the bids. Those are not all of the bids received over that period.

Q. It is a selected group?

A. They are all of the bids on the prescribed opening dates.

Q. On those dates?

A On those dates.

Q. Then, it is a selected group of dates?

A. It is one opening each year. We have two openings. This is one opening.

By Mr. Zimmerman:

Q. May I ask you this: Was there any particular method that was applied in order to select these particular examples?

A. They were taken in the month of June for the purpose of uniformity or results, as nearly as possible.

2538 Q. That is the only rule that was followed—simply to pick out the month of May or June of each year?

A. May or June; yes, sir. That is the first semi-annual period.

Q. How did you determine whether it should be May or June?

A. As I explained a few minutes ago, our replenish-

ment periods are twice a year, May or June, depending on whether we are able to get our invitations out in May; if not, they must be gotten out in June.

By Mr. Wooden:

Q. Now, Mr. Custer, you said the purpose of your inviting bids on cement was to get the benefit of competitive bidding?

A. Right.

2540 Q. Mr. Custer, based on your experience through these years in the handling of cement bids, have the bids been generally quoting an identical delivered price?

A. They have, generally.

Q. Have there been any recent instances in which bids were filed quoting the same price f.o.b. destination as the government destination cost to which the so-called control clause was attached?

A. There have been bids made—identical bids—for delivery at destination with prices inserted in the space provided in the invitation for f.o.b. mill prices?

2541 Q. You mean to say it would cost the Navy Department just as much to buy on the government destination cost as it did on the destination price bid in the other column?

A. In the form the bid was made, it would.

Q. Will you point out any instances of that that you have in mind in the 1937 bidding?

2542 A. I have before me a bid quoting $2.40 for delivery at destination, which the prescribed destination is Pensacola, and under bid B, bid B call for a bid to be delivered f.o.b. cars or on the wharf at or near contractor's works as may be ordered during the period from July 1, 1937 and ending December 31, 1937 in not less than carload lots, and certain other provisions not here material. Under this bid B, there is also inserted a price of $2.40.

Q. Who was the bidder?

A. Georgia Cement & Products Company.

Mr. Leisure: Would you designate the exhibit you are reading from, for the record?

The Witness: Bid No. 80 in Exhibit 384.

By Mr. Wooden:

Q. Did any other bidders do the same thing?

A. Another bidder, Lehigh Portland Cement Company

quotes a price of $2.40, delivery at destination Pensacola, Florida—this is the identical lot and schedule as identified before—and under bid B the same identical terms as read before, f.o.b. cars Boyles, Alabama, $2.40.

Q. That is the shipping point price?

A. That is bid B which specifies delivery f.o.b. cars or on wharf at or near contractor's works.

Examiner Norwood: That is the cement seller's works?

2543 The Witness: Yes, sir.

Mr. Leisure: Will you give us the number on that one?

The Witness: Bidder No. 118.

By Mr. Wooden:

Q. So if you wanted to deduct the land grant rate as provided for in the so-called control clause, you would pay just as much government destination cost as though it were shipped by commercial freight, is that right?

A. Well, obviously $2.40 at Boyles, Alabama, offers no advantage and is not worthy of consideration when we have a bid of $2.40 delivered at our station.

2544 EVERETTE MacINTYRE, was recalled as a witness on behalf of the Commission, and having been previously sworn, was examined and testified further as follows:

Direct Examination by Mr. Wooden (Resumed)

Q. What are the papers marked Commission's Exhibit 385-A to D for identification?

A. Exhibits 385-A to D for identification are photostats of documents which were furnished to me by Mr. Joseph S. Young, President of the Lehigh Portland Cement Company, Allentown, Pennsylvania, on May 25, 1933, and September 2, 1931. The date of May 25, 1933 applies only as to 385-D, the others September 2, 1931.

2545 Mr. Wooden: I offer them for the record.

Mr. Leisure: May I ask just a question?

Examiner Norwood: Yes.

Mr. Leisure: Do you know who Mr. Pritchard is?

The Witness: May I see the document from which you are taking the name?

Mr. Leisure (handing paper to witness): Yes.

The Witness: As I recall the name, he is in the sales department of the Lehigh Portland Cement Company, I am not positive about that, but that is my recollection.

Mr. Leisure: Who is that letter addressed to?

The Witness: That letter on its face is addressed to the Lehigh Portland Cement Company, Allentown, Pennsylvania, office, by the Birmingham, Alabama, office of the same company.

Mr. Leisure: We have no objection to these exhibits, Your Honor.

Examiner Norwood: Received as marked.

2546 (COM. EX. 385-A to D was offered and received in evidence.)

Q. Who is "RJS" whose initials appear on the first paper, 385-A?

A. I can not identify the man, but I notice that letter is initialled in the handwriting of someone "RJS" and signed "Birmingham office of the Lehigh Portland Cement Company."

2547 Mr. Wooden: Your Honor, since this relates to some of the bids of the Navy Department, I want to read a paragraph or so from this Exhibit 385-A.

Examiner Norwood: Make it as short as you can.

Mr. Wooden (reading): "Lone Star and ourselves quoted $1.72 per barrel cloth at the mill. Alpha quoted $1.712 and as they have the same land grant rates they were low and have been awarded the business according to Mr. Thomasson who telephoned the information to us this morning. Florida quoted $1.715 but are high on account of a higher rate.

"The $1.712 quotation by Alpha is an absolute contradiction of what we were given to understand prior to submitting of the bids. Our reason for quoting $1.72 is because we felt reasonably certain that Lone Star would use that figure and because we were directly advised by Alpha that $1.72 is the figure they would use.

"It certainly can not be claimed that a typographical error was made resulting in quoting $1.712 instead of $1.721 as there was no intention on their part at any time to quote other than $1.72 and the matter was entirely one of dropping the mill."

2548 The witness identified Com. Ex. 386-A to F, inclusive, as photostats of documents which were furnished

to him by Blaine Smith on May 31, 1933 at the time Smith was president of Penn-Dixie; and Com. Ex. 386-G and H as photostats of documents furnished to him by Mr. John F. Neylan, on May 29, 1933, at which time Neylan was Assistant General Sales Manager of the Lone Star Cement Corporation of New York City.

Mr. Wooden: I offer these documents for the record.

The witness identified Com. Ex. 386-B, C, D, E and F, as long-hand memoranda. He did not know who wrote them or under whose direction they were made. They were in that form when they were furnished to him in Mr. Smith's office. He did not know the author of Com. Ex. 386-H which was also in long hand; it was in that form when Mr. Neylan handed it to him in the Lone Star Cement Company's office on the date indicated. Com. Ex. 2549 386-G; also in long hand, was also in the form in which it now appears at the time that Mr. Neylan handed it to him in the office of the Lone Star Cement Corporation. He did not know whether the memorandum was made before or after the bids were opened.

Mr. Leisure: I object to these exhibits, Your Honor, as incompetent, irrelevant and immaterial and no proper foundation has been laid.

Mr. Zimmerman: Let the record show the same objections as to 386-A to H, I believe, as were made to 385.

(Discussion off the record.)

Examiner Norwood: Received as marked.

(COM. EX. 386-A to H was offered and received as evidence.)

Mr. Leisure: I am not sure whether my objection is understood. I said I object to these. I want to be sure that the record shows that it is 386-A to H.

Mr. Wooden: They related to the calculation of bids on the Cleveland base for delivery at Annapolis, Maryland, in 1932 and there are some calculations on various other bases as well as on Cleveland.

2550 A. BOYD CUSTER, was recalled as a witness, on behalf of the Commission, and having been previously sworn, was examined and testified further as follows:

Direct Examination by Mr. Wooden (Continued).

Q. Mr. Custer, Exhibit 385-A relates to some bidding on cement in April, 1931, for deliverey apparently at Pensacola, Florida. Will you undertake to get the bids which were submitted on that occasion? The number is 444-L, apparently. I do not know whether that is the invitation number or what.

A. Are there no other identification numbers?

Q. There might be.

A. May I ask if that is the date—the date you gave me—of the opening of the bids? If so, that is all the identification I need.

Q. Here is a telegram dated April 13, 1931 and I suppose it can be figured out just what the date was. It was the Thursday after the 13th of April, 1931. That is the nearest I can come to it.

A. I can identify and obtain and report on bids opened around about that date.

Q. What other commodities do you purchase besides cement?

2551 A. About 40,000 different items which is almost any item of material you could mention.

Q. Are you able to buy some items or some commodities without encountering this situation of identical bidding that you have referred to in these bids?

Mr. Leisure: That question is objected to as incompetent, irrelevant and immaterial and not within the issues in this case.

Examiner Norwood: Read the question, please?

(The question is read.)

Examiner Norwood: Objection overruled.

The Witness: The answer is yes.

2552 Washington, D. C.
Friday, January 21, 1938.

2553 A. BOYD CUSTER resumed the stand as a witness for the Commission and testified further as follows:

By Mr. Wooden:

Q. Mr. Custer, you were saying, at the close of your testimony yesterday, that you bought a number of commodities other than cement as to which you did not find identity of bid prices?

A. Correct.

Q. Will you name a few of the more important of
2554 such commodities?

Q. Do you buy textiles?

A. Textiles; yes.

Q. How about coal?

A. At the present time the prices are fixed by the National Bituminous Coal Commission.

Q. Prior to that time?

A. A wide range of prices.

Q. Do you buy these other commodities on specifications?

A. All purchased on specifications.

Q. So far as your purchases are concerned, the quality then of the goods you buy is standardized by your specifications?

A. The specifications fix definite standards of quality leaving only the matter of price to the bidder.

Q. When you brought the bids in on cement yester-
2555 day, you did not have, I notice, any abstracts attached to them. Do you prepare abstracts in your department or how is that handled?

A. The bids are abstracted at the time of their opening in large books, which are called proposal books. Bids are recorded as opened and read. A complete abstract is made of the prices bid at that time.

Q. In these large books?

A. In these large books.

Q. How large are the books?

A. 18 by 24 inches and from an inch and half to two inches thick and they weigh possibly 25 pounds apiece.

Q. Do they include all commodities or just cement?

A. They include all commodities. They are used in series of five, one for each week of the month.

2556 The witness identified Com. Ex. 387-A to J as a transcript or an abstract of bids received on several openings for cement. These abstracts were prepared immediately under witness' supervision based upon the records of the proposal book to which he had just referred.

He checked these tabulations and can verify their ac-
2557 curacy.

Mr. Leisure: This was a selected group of bids?
2558 This does not cover all the bids received?

The Witness: It does not cover all of the openings of bids; it covers all of the bids for the particular openings. It is a cross-section of the cement purchased since 1927.

Examiner Norwood: Does that cover all the bids that were submitted here yesterday and identified by you?

The Witness: No, sir; this does not cover all of those bids; it covers all for these stated openings.

Mr. Leisure: When you say a "cross-section," you do not mean to imply by that that this covers all of the delivery points? You selected certain delivery points for certain reasons, didn't you?

The Witness: To show merely by comparison the bids received over a period of years, and to do that it was confined to the deliveries to two navy yards, to minimize the work in its compilation.

Mr. Leisure: So as to the delivery points, you merely selected two navy yards and took those bids—

The Witness: (Interposing.) All the way through.

Mr. Leisure: All the way through. What two are those?

The Witness: The Brooklyn, New York Navy Yard, and Norfolk, Virginia.

Mr. Wooden: They are not always the same two.

2559 Mr. Leisure: It covers those two points all through those years?

The Witness: Yes.

Mr. Leisure: And that is what the abstract is?

The Witness: Yes.

2560 Mr. Wooden: I see in here New York, Portsmouth, Norfolk and Philadelphia.

The Witness: That is for 1937 only.

By Mr. Wooden:

Q. Directing your attention to the tabulation for June, 1927—

Examiner Norwood: Just a moment. Is there any further objection to this?

(No response.)

Examiner Norwood: It will be received as marked.

(COM. EX. 387-A to J inclusive was offered and received in evidence.)

Q. Directing your attention to the tabulation for June, 1927, on 387-A, is that another case where some of the bids on an f. o. b. mill basis, alternate B, were the same amount as the bid f. o. b. destination?

A. I could not answer that with certainty without referring to the schedule of the bid. A and B generally refer—A to destination and B the mill bid, although, for other purposes, it may stipulate other delivery conditions.

Q. Confining yourself to what the tabulation in your hand shows, then answer my question.

Mr. Leisure: I think, the witness said, confining
2561 himself to the tabulation, he could not answer the question. I think that answer is clear.

Mr. Wooden: He said he did not have the bids available to answer it, but I asked him to answer it on the tabulation.

The Witness: The tabulation bears a notation on Bid A delivered; on Bid B, f. o. b. bidder's plant.

By Mr. Wooden:

Q. What about the price in June, 1927, on those two bases? Were they the same regardless of which base was used?

A. They are identical throughout.

Cross-Examination by Mr. Leisure.

Q. To which Navy Yard did those bids refer?

A. Both Brooklyn and Norfolk.

Q. Did both or either of those Navy Yards have land grant rates running to them in those locations?

A. They do not and ordinarily not from the regions from which cement would be shipped to those Navy Yards.

Q. Mr. Wooden just asked you a moment ago about other products which were non-identical and on which you received non-identical bids. Would you have paid any different price for different grades of hardware?

A. That question would need some amplification.
2562 We buy hardware of different grades at different times, but not comparable. We advertise for one

garde and we do not accept another. Another time we buy another grade and likewise will not accept bids on another grade.

Q. Does the same thing apply to machinery and tools?

A. It does.

Q. You buy different grades at different times?

A. Yes, sir.

Q. And you pay different prices for those grades?

A. Ordinarily.

Q. You said yesterday, in regard to Exhibit 384—do you have that before you? You said yesterday that the price there was $2.40, as I took it down. Will you look at bid 108 and 118?

A. $2.40, bid A and B $2.40.

Q. I understood you to say that there was no advantage to the government either way on those two bids. Am I correct on that?

A. There is no advantage to the government on the f. o. b. bid. There is, obviously, an advantage to the government on the A bid.

Q. Will you explain that?

A. The A bid delivers the cement into the naval station with no extra cost involved. The f. o. b. bid B places the cement at the mill or factory which necessarily in-
2563 volves additional cost to deliver it where it is wanted.

Q. That difference was not developed in your testimony yesterday? You were not asked to give that testimony yesterday were you?

A. I do not recall that it was.

Q. May I just look at the one you are looking at?
2564 A. (Handing paper to counsel).

Q. Mr. Custer, in bid B, there was also a control clause, was there not, for Boyles, Alabama?

A. There was a conditional clause.

Q. And that conditional clause was to the following effect, was it not: "The U. S. government shall determine the cantract price f. o. b. cars Boyles, Alabama, on shipments moving on U. S. government bill of lading to the Naval Air Station, Pensacola (Big Bayou) for the Warrington, Florida or Corry Field, West Pensacola, Florida, by subtracting from $2.40 per barrel the land grant rate as determined by the U. S. government as being applicable from Boyles, Alabama, to the specified delivery points." That control clause applied to this bid B, did it not?

A. That was a conditional clause applying to the bid.

Q. So you do not understand that $2.40 when that clause was used is mill price? It was the destination cost price, was it not?

A. It may be interpreted either way. The price is stated under bid B without qualification, and elsewhere there is a qualification which may be treated as a condition or as a qualification of this bid. That would require study or an investigation.

Q. It is entirely clear to you, isn't it, Mr. Custer, that if this bid were accepted with this qualification, that
2565 that would be one of the qualifying clauses in the contract, namely the control clause?

A. Correct.

Q. So that would make it $2.40 at Pensacola under either bid, is that entirely clear?

A. We would not s[illegible]hold in the bid made in that form for the reason that I have stated. Bid B offers no qualification.

Q. The control clause is the qualification?

A. It supplements it.

Q. You mean you did not have a control clause; is that what you mean; in your invitation?

A. No, I mean that bid B is f. o. b. a specified point which is indicated there. I have forgotten where.

Q. Boyles, Alabama.

A. Yes. Which is not at the navy yard, and there must be something added to that to get it to the navy yard.

Q. Well, there is not any question but what when this bid is accepted with the control clause, that the language that I have read to you applies to that particular contract is there?

A. I can only answer that, that a conditional bid and which is on its face less favorable than a delivered bid is given no consideration. For our purpose, it is as though the bid does not exist. Our awards are determined first by determination of the lowest bid for the delivery specified, and if there is no price lower than that delivered
2566 price, then conditions mean nothing to us, we do not attempt to go into them at all.

Q. Well, that may be true in regard to your determining which bidder you will determine is the successful bidder, but you do not mean to say that when a bidder makes a

bid with certain specifications in his bid, that you disregard his specifications?

A. No, I do not.

Q. That is in the form of a counter-offer, is it not?

A. It is.

Q. He will bid on those conditions?

A. Correct.

Q. So when this control clause is used and you accept the bid, there is not any question of your being bound by the control clause?

A. If we accept the bid.

Q. That is the point I wanted to bring out. Now, you brought out that there was no benefit on those at $2.40 as far as the government is concerned. Will you look at it for just the year before for Pensacola. You picked out just one year to determine that point. Will you look at the year before, 1936, for instance, in Exhibit 383. Do you find the same condition obtains in 1936 as in 1937?

A. No identically. The bid is made in a different form.

Q. They are different in that case, aren't they?

2567 A. Slightly different.

Q. What are the differences?

A. The major difference here is that the bidder did not insert any price on our scheduled forms under either bid A or Bid B. The bid was made by a rider attached to the bid, which rider was the bid in its entirety.

2568 Q. And the amount of the rider is how much?

A. $2.4635 per barrel.

Q. Is that the destination price?

A. Destination cost to the United States Government for Pensacola, Big Bayou, for Warrington, Florida.

Q. And it is how much, please?

A. $2.4635 per barrel.

Q. What is the other offering?

A. $2.4635 per barrel, in cloth sacks, destination cost to the U. S. Government for Corey Field, West Pensacola, Florida. Both bids contained a qualifying clause substantially the same as you read from the other bid.

Q. So that in one of those figures, the first figure you gave was $2.4635 which was the destination cost bid? Is that correct?

A. That is correct.

Q. Now, you gave us another destination with another destination cost, which was $2.4635 also.

A. In a complete understanding of that difference, I will read the form of our invitation.

2569 "Bid A. To be delivered, all transportation charges paid, to the Supply Officer, Naval Air Station, Pensacola (Warrington, Florida), or Corey Field, West Pensacola, Florida."

For the purpose of this bid, Naval Air Station, Pensacola, Warrington, or Corey Air Field were equal.

Q. Will you give us the destination prices as you did in answer to Mr. Wooden's question on the 1936 bids? What is the destination price quoted on the alternate bids?

A. This same bid?

Q. Yes.

A. The price I just quoted—$2.4635 per barrel.

Q. That is the destination cost, is it not, Mr. Custer? Did they give an alternate bid?

A. Just what distinction you make between destination cost and destination price is not clear in my mind. Destination price is the price at which the contract is made and the price which we are required to pay for the material. For our purposes price and costs are synonymous.

Q. Now, when you purchase something and you are figuring how much the total cost will be to you, you will take the bid and add the transportation cost to that, will you not?

A. Correct.

Q. And that will give you a total cost to the Government so you can understand, when I say destination

2570 cost what I mean—that that is the total cost to the Government?

A. Correct.

Q. Now, you can understand how you could have a price at some other point which did not include destination costs to you?

A. Have a bid which does not include destination cost, is correct.

Q. You read, without any hesitation, to Mr. Wooden two alternate bids—destination price and destination cost—and I am merely asking you to do the same thing for me. I mean I am not testing your memory. I am asking what the bidders did on that piece of paper.

Mr. Wooden: I do not think the witness has shown any hesitation about replying.

The Witness: If I gave the impression that I recog-

nized a distinction at that time, it is unfortunate, because I had in mind the one thing.

Examiner Norwood: You gave some f. o. b. shipping point prices and some destination prices.

The Witness: Yes, sir. It was a matter of prices and not costs.

By Mr. Leisure:

Q. Now, I am trying to find out—in the bid you have just been looking at, you have only given us destination costs to two different points. I was trying to get the
2571 destination price just as we did in the other case.

Mr. Wooden: I am free to admit that the situation we have shown in some cases did not exist in all cases. Of course it is proper to bring out the fact that it does not exist in all cases, but I do not think it is important.

Mr. Leisure: Many bids have been offered to show that situation, yet the very preceding year the situation as pointed out by counsel did not exist.

Mr. Wooden: I just stated that it did not always exist.

Mr. Leisure: I think, then, we can save some time on that, Your Honor. Counsel concedes he picked out some instances or at least one instance where it was not typical, but did exist on the occasion picked out. I think that will save going through all of that.

By Mr. Leisure:

Q. I am not entirely clear, Mr. Custer, getting back to your testimony of a moment ago, whether, when you get a group of bids, you just look at the figures and ignore the conditions or whether or not you take into consideration the conditions in determining who shall be the successful bidder. I would like to have you develop that so it will be clear.

A. We look at the figures first. The low bid price, if there were no conditions in that bid, is accepted. If that low bid also contains conditions, then we go into the conditions.

2572 Q. Just one more question, Mr. Custer, on this subject of identical bids. You told Mr. Wooden this morning that you had non-identical bids on certain products, is that correct?

A. Correct.

Q. Now, is it or is it not a fact that you had identical bids on a great many standardized products that you do have?

A. During the administration of the National Recovery Administration we did have identical bids on a great many items.

Q. How about down to June 30, 1937?

A. We are still having identical bids on some materials.

Q. Well, on a great many standardized products?

A. That is relative, "a great many," is relative. When you remember that we have about 40,000 items.

Q. Well, let us say 40 or 50 standardized products, you receive identical bids?

A. Offhand, I would say that is a little high.

Q. How much too high?

A. I would say possibly 25.

Q. Twenty-five standardized products?

A. That would be the top limit at the present time.

Q. But you are not going by any record; that is just your best recollection?

A. My recollection.

2573 *Redirect Examination by Mr. Wooden.*

Q. How are you billed for cement? Are you invoiced for it by the mill?

A. It is not a part of my duties to check invoices or vouchers. I can only answer that from general observation, and on that basis it is billed at a delivered price.

Q. Who do you pay the freight to?

A. It is ordinarily purchased on the delivered basis which does not involve the Navy Department in the payment of freight.

Q. How do you distinguish between payment for what you pay for cement and what you pay for freight? That is what I am getting at.

A. Where the contract is made at a delivered price, we are not concerned with its make-up. We do not
2574 distinguish between the cost and the freight.

Q. Do you know what the face of the invoices coming to your department show on that as to whether freight is deducted before the invoice is paid to the company?

A. From my observations, freight is not shown on the invoice.

Mr. Wooden: That is all.

Mr. Leisure That is all.

By Mr. Wooden:

2612 Q. What is the paper marked 395 for identification?

A. A letter from me to Dr. Arthur Morgan, dated June 13, 1934. It is a summary of certain decisions of the cement committee, which succeeded the Leeds-Fetter-Eckels Committee and reads—

Q. Were you objecting to some of the conclusions of that committee?

A. I pointed out four points in which I thought we were accepting rather higher bases for estimate
2613 than should have been accepted.

2629 CHARLES H. GARITY, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

I am director of purchases of the Tennessee Valley Authority and have occupied that position since August, 1933. The scope and general nature of my duties in that capacity is that I am the procurement officer for all materials, supplies and equipment for the Authority. During my regime as director of purchases, I have purchased cement.

Q. Will you give a general description of the methods employed during your entire period of service? I mean a general comprehensive picture of just how you have gone about the purchase of cement?

2630 A. We have followed the general government procedure the same as the other agencies have used. I think that answers the entire question.

Q. Does that mean that you have invited bids and made awards on the basis of the bids received?

A. Yes, sir. I might explain—

Q. (Interposing) Does that apply throughout the period in equal degree or is there any qualification of that as to any particular parts of the period?

A. Until August, 1934, we generally followed the regulations set out by the statutes—3709, I think it is known as—and in August, 1934, our act was amended. Section 9-B was amended, which gave the Authority latitudes that permitted us to buy in a little different form perhaps than the 3709 requirement.

Basically we would have received bids and placed the business with the lowest bidder meeting all the conditions of the bid and specifications, but we were also permitted, under our act, to make awards on the basis of plant facilities, the integrity of the bidder and other points—skill of the bidder, etcetera. I cannot quote the act exactly.

Q. Was that interpretation of the act ever disputed, or your administrative interpretation?

A. Disputed by whom?

Q. By anybody.

A. Yes, it has been disputed by the Comptroller
2631 General's Office.

Q. Has the dispute been settled yet?

A. No, sir.

Q. About when did you make your first purchase of cement for T. V. A.?

A. The first major purchase was made early in 1934. I can give you the exact date if you want it.

The witness identified Com. Ex. 396 as the invitation for the bids on the first purchase, dated February 26, 1934. He identified that document as the invitation for the first bid.

Mr. Wooden: I offer that in evidence.

2632 Mr. Leisure: No objection.

Examiner Norwood: Received as marked.

(COM. EX. 396-A to KK inclusive was offered and received in evidence.)

Q. Did the invitation that you have just identified call for bids f.o.b. mill or at destination?

A. F.o.b. mill.

Q. What kind of cement was called for in the invitation?

A. Standard Portland cement, Type A and Type B, or rather not in that order, Portland cement, and Type A and B.

Q. And the respective ingredients and standards for each kind were set out in the specifications?

A. I can not answer that correctly. Standard Portland cement has one formula, and A and B has a little more or less of something else in it. I don't know what it is.

Q. The formula for A and B appear in the invitation?

A. In the specification.

Q. What is the paper I hand you marked Com-
2633 mission's Exhibit 397 for identification?

A. That is a copy of the official abstract of bids received by the Authority on the first bid opening. It is dated March 19, 1934.

Mr. Wooden: I offer that for the record.

Mr. Leisure: No objection.

Examiner Norwood: Received as marked.

(COM. EX. 397 was offered and received in evidence.)

Q. Now, will you tell us, Mr. Garity, whether or not the bids of given companies on Type A, Type B and Standard cement are the same?

A. They are not the same.

Q. To what extent is that the case?

A. To answer that properly, it will be necessary to separate the two dams. There are two dams involved here.

Q. All right; separate them.

A. Do you want each brand of cement or do you want the B that we bought?

Q. I want the Type A, B and Standard. For instance, take Bidder No. 1.

A. Do you want the difference in the price unit?

Q. I want to know what the prices were for Type
2634 A, Type B and Standard bid by Bidder No. 1.

A. Bidder No. 1 is 1.4868 per barrel on Type A; 1.4868 per barrel on Type B; 1.4686 per barrel on Standard Portland for the Norris Dam. Bidder No. 1 did not bid on the Wheeler Dam.

Q. To what extent is true of the other bidders on the Norris Dam as to whether their bids made a difference between Type A, Type B and Standard cement?

A. There is no difference in the quoted prices for the three different types of cement.

Q. What was the other dam on there besides Norris?

A. The Wheeler Dam.

Q. What is the situation regarding the bids on the Wheeler Dam on the same subject as Type A, Type B and Standard?

A. There is no difference in the unit price per barrel on any one of the three types of cement.

Q. Will you look at Bidder No. 11 on the Norris Dam. Was there a difference there in the case of that bidder between the three types?

A. Yes, there was. Type A $1.82; Type B $1.75; Standard $1.75.

Q. As I understand it, Type B was what you actually purchased, is that right?

A. Yes. May I correct the statement on the Wheeler by the same token?

2635 Q. Surely.

A. As to the Wheeler Dam Bidder 11, there was a difference, $1.82 on Type A, $1.75 on Type B and $1.75 on Standard.

2636 Q. Do you find the bids there of the different bidders on the same type cement and for the same dam exactly the same or not?

A. They are not exactly the same. You mean one bidder against the other?

Q. Yes.

A. They are not the same.

Q. Are there considerable differences between them?

A. Well, there is a low price here of $1.3591856.

Q. And what is the high?

A. The high, type A, is $1.82 and for the type B and standard bid is $1.75.

Q. Approximately what difference does that make in that range between the high and the low?

A. About 40 cents a barrel, approximately.

Q. Were those bids on an f. o. b. mill basis?

A. On an f. o. b. mill basis, yes, sir, with the one exception—well, bidder 13 quoted f. o. b. mill but also entered an alternate bid for f. o. b. destination, presumably Coal Creek. This does not show.

Q. What can you say as to whether or not those varying prices f. o. b. mill worked out to the same price when put on a delivered basis?

A. Well, as a matter of fact, they actually did, for the type B cement, which we purchased.

2637 Q. What was the delivered price basis that is the equivalent of those varying f. o. b. mill prices?

A. I do not know whether I can show that. Yes, I can, too—$2.0696 delivered at rail head, Coal Creek, for the type B cement.

Q. Was land grant transportation involved in the purchases under those bids?

A. It was not involved on the Norris Dam. It was not involved on the Wheeler Dam.

Q. Those are the two that you are referring to in this series of bids?

A. Yes, sir.

By Examiner Norwood:

Q. Do I understand that when you add the freight from the different points to these varying bids they produce identical results? Is that right?

A. That is true on all but three bids received. Those three bids were slightly higher due to decimal point calculation.

Q. That is, out of a total of how many mills?

A. Fourteen bids.

Q. They worked out to identical results from all but three and those three were higher than the identical bids?

A. Yes, sir.

By Mr. Wooden:

2638 Q. How were the awards made on these bids in March, 1934?

A. You mean on the basis of delivery?

Q. First, how did you determine which bidder should be awarded the contract or share in the contract?

A. We took the three mills nearest Norris project and three mills for the Wheeler project—not necessarily the nearest mills, but mills that could and would make delivery. We had to be sure of receiving cement; so we picked out the mills based on their ability to supply cement when we needed it.

Q. In other words, the awards were not made on the basis of price, but upon the factors you have just named?

A. Yes.

Q. Who were the 14 bidders in that March bidding?

A. That is listed on the bottom of this exhibit 397. Shall I read them?

Q. Yes, give us the names.

A. Louisville Cement Company, Louisville, Kentucky. Washington Building & Lime Company, Baltimore, Maryland. Wabash Portland Cement Company, Detroit, Michigan. Lone Star Cement Company, Birmingham, Alabama. Cumberland Portland Cement Company, Cowan, Tennessee. Marquette Cement Manufacturing Company, Chicago. Hermitage Portland Cement Company, Nashville, Tennessee. Alpha Portland Cement Company, Birmingham.

2639 National Cement Company, Birmingham. Lehigh Portland Cement Corporation, Birmingham. Volunteer Portland Cement Company, Knoxville. Pennsylvania-Dixie Cement Corporation, Chattanooga, Tennessee. Universal Atlas Cement Company, Chicago. Signal Mountain Portland Cement Company, Chattanooga.

Q. Was there any objections made by any representatives of the industry to the bidding or the bids that were filed in that case—any objections come to your attention?

A. There were some objections, I think, concerning the Code.

Q. From whom did the objections come?

A. From whom?

Q. Yes.

A. I will have to refer to my files to answer that.

2640 The witness identified Com. Ex. 398 A and B as a letter addressed to him from the Code Authority, Portland Cement Industry at Chicago, dated March 23, 1934, calling attention to apparently a lack of compliance with one of the articles, Article 9, of the Cement Code; "C, D and E" as a letter addressed to him dated March 29, 1934, which also concerns the question of the Code. These original documents are from his files.

Mr. Wooden: I offer them with the understanding that copies may be substituted and the originals returned to the witness.

Mr. Leisure: No objection.

Mr. Zimmerman: I desire to reserve the objection that they are not relevant or material.

Examiner Norwood: Received as marked.

COM. EX. 398-A to E, inclusive was offered and received in evidence.)

2641 By Mr. Wooden:

Q. What was the outcome or how were the objections represented in this communication handled?

A. I do not recall, but generally speaking we had no administrative power so far as codes were concerned. Our requirement, I think under Executive Order 6406 or 6046, we were required as procurement officers to secure a certificate that the bidders were complying with their code. If they did not, the matter was then one which was in the hands of the N. R. A. Administration or authority, and letters of this nature we paid little or no attention to them unless we were ordered to do so by the Administration in

Washington. We would not stop making a purchase if we had the signed certificate unless we were ordered to do so by the main organization of the N. R. A. in Washington.

Q. What was the situation with reference to that matter as to whether N. R. A. in Washington did ask you to take any action?

A. They did not ask us to take any action from Washington.

Q. Was there any delay in the purchase as the result of the objections made by the Code Authority?

A. No, sir.

2642 Q. Mr. Garity, are we to understand from what you have just stated that you received no representations from N. R. A. to the effect that the Code had been violated in the filing of these bids?

The Witness: We received no communication from the Washington office of the Federal branch of the N. R. A. Perhaps that clarifies it. We did receive notifications from the individual Code Authority, the Code Authority for the Cement Industry at Chicago.

2643 Q. That is the way I understood it, but I wanted to make sure.

A. I think it should be recognized that the Procurement Officer could take no administrative action on the purchase, because an industrial code authority, appointed by Washington, asked them not to take action; that it was not within the Procurement Officer's province to take action.

Q. Did you have any representations from individual bidders challenging the claim of the code authority that the code had been violated?

A. I think so, Mr. Wooden—several, but I do not recall who they were.

EVERETTE MacINTYRE was recalled as a witness on behalf of the Commission, and having been previously sworn, was examined and testified further as follows:

Direction Examination by Mr. Wooden.

The witness identified Com. Ex. 399 A to H
2644 as photostats furnished to him by Mr. George H.
2645 Reiter of Cement Institute on July 22, 1934; Com. Ex. 399 I to K as photostats of papers furnished to him by

Mr. Charles Hogan of International on June 7, 1934; Com. Ex. 399 L to AAA as photostats furnished to him by Mr. George H. Reiter of Cement Institute on June 22, 1934; Com. Ex. 399 BBB as a photostat of a paper furnished to him by Mr. Charles L. Hogan of International on June 7, 1934; Com. Ex. 399 CCC to ZZZ as papers furnished to him by Mr. George H. Reiter of Cement Instute on June 22, 1934.

Mr. Wooden: I offer these papers with the statement that they all relate to the matter of filing prices with the Code Authority relative to T. V. A. Bidding.

2646 Mr. Zimmerman: We note an objection to the admission of the papers so described by the witness—all of them—on the ground that they are not relevant or material to any issue in the case.

Mr. Wooden: I should add that they relate to the bidding in the spring of 1934.

(Discussion off the record.)

Mr. Leisure: May I ask the witness a question, your Honor?

Examiner Norwood: Certainly.

By Mr. Leisure:

Q. As to Exhibit 399-SS, do you know in whose handwriting that memorandum is written?

A. I do not.

Q. Do you know under whose instructions it was written?

A. I do not. It is merely a photostat that was furnished to me, in its present form, by Mr. George H. Reiter, as I have already testified.

2647 By Mr. Wooden:

Q. Did you find that paper in the same files from which the other papers in this exhibit were selected for photostating?

A. I did.

2648 Examiner Norwood: All of the exhibits 399-A to ZZZ, are received with the exception of the paper marked "SS."

Q. Can you add anything to the identification of the paper in question, Mr. MacIntyre?

A. Nothing except the fact it was found among the other papers which are marked as parts of Exhibit 399 and Mr. Reiter, when I secured the batch of papers from him, told

me that the batch of papers related to the T. V. A. lettings. He did not mention any specific paper in the batch, but that paper was among the papers in that batch.

2649 Examiner Norwood: You might give us some more information about it later and we may then be able to take it in.

CHARLES H. GARITY was thereupon recalled as a witness for the Commission and testified further as follows:

Direct Examination (Continued) by Mr. Wooden.

Q. Mr. Garity, you were saying that you got some representations from bidders challenging the contention of the Code Authority that they had violated the code in their bids?

2650 The witness identified Com. Ex. 400 A as a letter addressed to him dated April 5, 1934, from Marquette; "B, C, D, E and F" as a copy of a letter addressed to the Code Authority in Chicago apparently from Marquette, which was an attachment to the letter of April 5, and is dated April 5, 1934; "G" as a telegram addressed to him dated March 31, 1934, from the Louisville Cement Company. Those papers are from his files.

Mr. Wooden: I offer them in evidence.

Mr. Leisure: Your Honor, with reference to the exhibits pertaining to the Marquette Company, their counsel is here. As to the other exhibit, G, being from the Louisville Cement Company to the witness, the Louisville Cement Company is not a respondent in this action, and I object to the telegram as being incompetent, immaterial and irrelevant and it could not possibly be binding in any way upon the respondents in this case.

Mr. Wooden: Your Honor, as to the Louisville
2651 Company, I would offer it on the ground that it is a communication in the regular course of business that was a part of the res gestae of respondents' acts in protesting the bid which the Louisville Company had made. I am informed that at that time too they were a member of the Institute although not now.

Mr. Leisure: Whether they were membe. of the Institute or not, the Code Authority is not a respondent here and neither is the sender of the telegram, and I submit that

we should not have to spend much time on that kind of evidence, because under no stretch of the imagination could we be bound by any communications of that kind between third parties.

Examiner Norwood: How is this Louisville Cement Company connected in any way with these matters?

Mr. Wooden: It is one of the bidders on this March, 1934, invitation. The Code Authority which was representative of the Institute protested the bid of the Louisville Company as a violation of the Code. The Louisville Company challenged the thing by that telegram.

Examiner Norwood: Did the Code Authority protest at the instance of any of these respondents?

Mr. Wooden: Yes.

Examiner Norwood: Or the Cement Institute?

2652 Mr. Wooden: Yes.

Mr. Leisure: That has not appeared yet.

Examiner Norwood: Is it shown?

Mr. Wooden: It is shown in the exhibit.

Mr. MacIntyre: If Your Honor please, off the record—

(Discussion off the record.)

Examiner Norwood: I think these should go in.

Mr. Zimmerman: As to Exhibits 400-A to G, our objection is that they are not relevant or material to any issue of the case. They involve a period during the code, and are complaints as to whether the prices were correctly filed or not and I think are not properly a part of the case under complaint.

(COM. EX. 400-A to G was offered and received in evidence.)

2654 Q. What is the paper marked Exhibit 401 for identification?

A. 401 is the official copy of the abstract of bids received by the Authority on October 15, 1934.

Q. Did you go through the process of inviting bids from the various mills after reaching a negotiated price averaging $1.30?

A. Yes, sir.

Q. What was the idea in going through the process of having bids submitted after that negotiated price was arrived at?

A. In the first place, we had no assurance from the telegram that the chairman sent to Mr. Blaine Smith, I think, that they would quote a price which would give us

$1.30 at the mill. In the second place, we are required by our Act to advertise our purchases.

Q. Then, as I understand it, it was followed in order to check whether the average of $1.30 was being adhered to in the bids actually submitted, is that right?

A. To check?

Q. To ascertain.

A. To determine the correct price that we were
2655 to pay for cement, not to check on the $1.30 necessarily.

Q. Did the bids as received average out on the $1.30 basis?

A. From our calculation they did not—did you say "average out?"

Q. Yes.

A. Well, it would be hard to say that they averaged out. There was a difference in the calculation applied to the mill price.

Q. Depending on the particular mill?

A. Exactly.

Q. But I understood the basis of the negotiated price was $1.30 average at the mill?

A. $1.30 was our negotiated price, the price that we discussed before we sent out our bids. In some cases it was $1.28 and in other cases it was $1.32. In one case it was $1.43, as I recall.

Q. What was that last case?

A. I think that was Volunteer.

Q. Do you know on what base if any the bids in October, 1934, were calculated?

A. On what basis they were calculated?

Q. On what base, not basis.

A. Do you mean on what base mill or the basing point?

Q. Yes.

A. Well, we could after we got the abstract tell
2656 what the basing point was.

Q. All right, what was it?

A. In the case of Norris, it was Chattanooga; in the case of Wheeler Dam, it was in the Birmingham District. I would have to examine the bids to detail the others.

Mr. Wooden: I offer in evidence Exhibit 401.

Mr. Leisure: May I ask the witness a question about the exhibit?

Examiner Norwood: Certainly.

Mr. Leisure: I think you just stated that you advertised partly because of something—I did not catch what that was.

The Witness: To determine what our prices were actually going to be. We had no asurance because the chairman wrote a telegram saying that would be as much as we would pay,—it did not prove anything. Certainly, we had to advertise by the requirements in our Act.

Mr. Leisure: So, regardless of anything else, you would have advertised anyway, would you not?

The Witness: We would have advertised anyway.

Mr. Leisure: No objection.

Mr. Zimmerman: I make only the same objection as to materiality and relevancy.

Examiner Norwood: Received as marked.

(COM EX. 401 was offered and received in evi-
2657 dence.)

Q. The bids in October, 1934, for what type of cement were they invited?

A. Type B and standard Portland.

Q. Were the bids actually submitted for the type B and standard the same for the two qualities or were they different?

A. They were the same.

Q. Any exceptions?

A. I think not, but I had better look at these. (Examining paper.) They were the same.

Q. Were the bids of the respective bidders the same?

A. Yes, sir.

Q. Was that on a delivered basis or mill basis?

A. On a delivered basis.

Q. Were there any mill prices quoted?

A. No, sir.

Q. Were any asked for?

A. No, sir.

2658 The witness identified Com. Ex. 402-A as a tabulation made by him of the plus and minuses on the $1.30 base figure.

Q. Will you explain what you mean by plus and minuses?

A. It figures back to the actual price at the mill for each project. They are figured in the terms of minus $1.30 or plus $1.30 depending on the location of the mill. That is "A."

The witness identified 402 B as a list of the allocations

by barrels to the various cement mills and he thinks it is the final allocation; Com. Ex. 402 C as a summary of the total estimated barrels and the money value for the cement as considered at that time; Com. Ex. 402-D as another analysis of the allocation on a percentage basis. He is not sure whether Com. Ex. 402 B is the final allocation. He thinks he mentioned that before.

But this is an allocation by percentages. I can correct that from my own records.

Q. That is 402-D?

A. Yes. E is an allocation again on the percentage basis.

The witness identified papers 402-A to D as prepared by him in connection with the analysis of the bids in October, 1934.

Mr. Wooden: I offer these in evidence.

Mr. Leisure: No objection.

2659 Mr. Zimmerman: I make only the same objection; namely, that they are not material or relevant.

Examiner Norwood: They will be received as marked.

(COM. EX. 402-A to E was offered and received as evidence.)

Q. Can you tell by looking at 402-A, in the light of your explanation of the pluses and minuses, what the largest plus was and what the largest minus was?

A. The largest plus on this summary is .1504 per barrel on the Holston River project.

Q. In other words, 15 cents plus?

A. Yes.

Q. And the largest minus?

Mr. Leisure: Is the record clear as to what is meant by the largest plus?

Examiner Norwood: He is bringing that out.

Mr. Wooden: It is above or below $1.30.

The Witness: Shall I explain it?

Examiner Norwood: Finish your answer, yes.

The Wintness: You want the largest minus?

Examiner Norwood: Yes, that was the question.

The Witness: .2820.

2660 By Mr. Wooden:

Q. Is that 28 cents plus?

A. Yes. I have a couple more here. I want to correct that figure. The largest minus was .5235.

Q. 52 cents?

A. Yes, sir. Do you want the name of the mill?

Q. Yes, give the names of the largest plus and minus.

A. The largest plus was the Volunteer Portland Cement Company in Knoxville.

The largest minus was the Pennsylvania-Dixie plant at Clinchfield, Georgia.

Q. Does that mean, Mr. Garity, that the company with the largest plus was realizing $1.45 approximately at the mill?

A. Yes, sir.

Q. And the mill with the largest minus was realizing —what was that difference?

A. This happens to be 52 cents.

Q. Realizing what at the mill?

A. $1.30 less 52, if they got the business.

Q. They were willing to take it on that basis?

A. Yes, sir.

Examiner Norwood: That plus and minus was with relation to what?

The Witness: The established figure given by the chairman as the maximum price that we would pay at the
2661 mill for cement, which was $1.30 net, and taking these quotations, we figured back on the freight and in some instances we discovered that the mill price was less than $1.30 and in others it was higher.

Examiner Norwood: The largest minus below that established price was .5253?

The Witness: Yes, sir.

Examiner Norwood: And the largest plus was .1504?

The Witness: Yes, sir.

By Mr. Wooden:

Q. Did you buy some from that mill that had that plus of 15 cents?

A. We have a contract and if and when we build the Holston River dam they will supply cement at that plus 15 cents, but as we look at it now, the Holston Dam will not be built for a long time to come, if ever.

Q. Do I understand you have not bought at the $1.45 mill, net?

A. No, sir.

Q. Have you bought some higher than the $1.30 at the mill?

A. Yes, sir.

Q. Can you specify any cases?

A. For the Norris Dam, we purchased some from the Volunteer Portland Cement Company, whose plus was .1316 or a mill price of $1.4316. That is net, of course.

2662 Q. How large a quantity have you bought from them?

A. We allocated at the time on this particular contract for Norris, 300,000 barrels, and I think we have exceeded that maybe 20 per cent. I will get the actual figures, if you require them.

Q. Referring now to Exhibit 402-B, it is called a second analysis. You calculate the delivered cost and get a total figure of some $13,000,000, and then you have a figure of something over $15,000,000, which is designated as being 20 per cent increase. Will you explain what that means?

A. Our invitations to bid indicated in the case of the Norris Dam and the Wheeler Dam, an approximate quantity in barrels. For the other dams, we indicated that the cement that would be required, as there was no barrelage indicated for the other dams, we had a provision in the invitation to bid that the Authority reserved the right to increase or decrease the quantity specified, particularly on Norris and Wheeler, 20 per cent, and if and when we made the estimates for the other jobs, that would also be subject to the same plus or minus.

Q. The increase was entirely a quantity proposition and not an increase in the estimated cost per unit?

A. No, sir.

Q. As I understand it, contracts were entered into following these bids of October 15, 1934?

2663 A. Yes, sir.

Q. And the contracts of course carried the price that was to be paid? The destination price, was it?

A. I would have to look at the contract. (Examining paper.) Destination cost. That would have to be because the bids were taken on destination cost.

Q. Was there a so-called control clause used in the bids in October, 1934?

A. I don't understand that control clause; you will have to explain that; it is a new one on me.

Q. Was there a clause attached to the bids that provided that the government should determine its f. o. b. mill

cost for invoicing purposes by deducting either the land grant, commercial or special rate whichever was lowest?

A. There was no such clause in our contract.

Q. Or in the bids as received?

A. No, sir.

2664 Mr. Wooden: Do they have a sliding scale provision?

2665 The Witness: A sliding scale provision for what? We have an adjustment clause in the contracts.

Mr. Leisure: That was true of all the contracts, was it not?

The Witness: Yes.

Mr. Leisure: Are you sure of that?

The Witness: Yes.

(COM. EX. 403-A to blank and 404-A to blank were offered and received in evidence.)

Q. Will you explain, Mr. Garity, about this sliding scale or adjustment provision of the contracts?

A. I would like to have a copy of the contract before me as I cannot speak from memory. (Examining papers.) I am reading from Exhibit 403, Article 24 covering the price adjustment to increase or decrease the delivered cost of cement to the Authority in the event that the contract has increased or a decrease of labor, fuel, purchased power and purchased raw materials including gypsum, iron ore or a substitute thereof.

Q. As I understand it, if changes in the cost of those items occurred, then a change might be made in the contract price?

2666 A. Yes, sir, providing the change at any one mill amounts to 5 cents or more per barrel.

Q. In general, what adjustments had been made as a result of the operations of that clause?

A. Speaking from memory, the one contractor, the Volunteer Portland Cement Company had a lower cost as a result of decrease from some one of those items—labor, fuel, perhaps, and so on—amounting to, I think, 6 cents. We reduced the delivered cost at that time. It was within the 10 days as called for here,—6 cents per barrel. Because the other two contractors holding contracts for shipment to Norris Dam had qualified their bid saying they would meet the lowest delivered cost from any other mill, we in turn reduced their price 6 cents per barrel.

Q. That went through without any objection?

A. Yes, sir. Since then, however, the Volunteer Portland Cement Company's price, or perhaps let us say the cost structure, went up, I think 9 cents per barrel. We immediately reinstated their price to the 9-cent level, the price less 6 cents plus 9 cents, but by the same token we put back the other two mills to their original quotations.

Q. Does that mean that the Volunteer Company on the latest arrangement received how much more than the original price? Approximately?

A. 3 cents a barrel.

2667 Q. And that did not affect the amount realized from the others who had been reduced?

A. No, sir.

Q. No change was made in theirs?

A. Except to bring them back to the level of their quotations or the contract price.

Q. Is that the only upward adjustment of the contract prices that has been reduced?

A. We have had some adjustment to the transportation clause, which is a sub-paragraph on paragraph 24 of the contract which reads: "Adjustment in the price of cement furnished hereunder shall be made from time to time to allow for any increase or decrease in the cost of transportation as of the effective date of such change. The contractor shall furnish to the Authority any changes in transportation cost and published tariff rates immediately upon their publication."

And there was at one time a 7 per cent emergency freight rate increase, and we gave that to all of the mills that were involved. Since then that increase has been taken off, and we have gone back to our old figures.

2668 Q. What method was used to determine whether or not the cost of various mills did change?

A. We have a contract with the Price-Waterhouse Company and are permitted, under the terms of our contract, to call in a local auditor to check the cost figures at each point, and that was done in the cases where declines and advances were effected.

Q. Were there any companies that submitted bids or that entered into contracts that did not provide for an adjustment in the price depending on changes in the factors that you have enumerated?

A. There were no bidders who had any different form of quotation or form of contract, with two exceptions. The

Volunteer Portland Cement Company and, I think, the Lehigh Portland Cement Company did not stipulate in their bid that they would meet the lowest price from any other mill. So, in that respect, those two contracts are slightly different from all the others.

Q. Did those differences, in your opinion, constitute any advantage to T. V. A.?

A. No, sir.

Q. They were not a factor?

A. They became an advantage, but did not constitute an advantage.

Q. What do you mean by they became an advantage?

2669 A. The two mills, Norris and Volunteer, when they reduced their price, were obligated to have that deduction made against their contract price. Had they left that statement off—

Q. Like two of them did?

A. In other words, if it were Lehigh we would have no right legally to make that request that they reduce the price.

Q. Nor would you have been required to pay any higher price?

A. Except if they had individual cost structures that changed upwards or downward in accordance with Paragraph 24.

2677 Q. What are the papers marked 406-A and B?

A. 406-A and B is a copy of an office memorandum from me to W. R. Chambers.

Mr. Wooden: I offer that in evidence.

(Discussion off the record.)

Mr. Leisure: I object to Exhibit 406-A and B, your Honor, being an office memorandum between this witness and an engineer in his own department. It is incompetent, irrelevant and immaterial as far as the respondents in this case are concerned.

Examiner Norwood: The witness testified to the correctness of those statements?

Mr. Leisure: He says he does not know whether that is a complete memorandum or not. He said he usually signed his memoranda.

The Witness: It is a memorandum taken from my files.

Examiner Norwood: Will you testify to the cor-
2678 rectness of the memorandum?

The Witness: As far as it goes; yes, sir.

Examiner Norwood: Received.

(COM. EX. 406-A and B was offered and received in evidence.)

The witness identified Com. Ex. 407-A as a pencil memorandum. It looks like Mr. W. R. "Chamaers" initials but the witness is not sure; "B" as a comparison of the statement of cement costs with new plant estimate; "C" as a statement of costs of manufacturing cement; "D" as a summary sheet on the same subject. There is no title on "E, F and G," but it looks like a breakdown of cost comparisons of cement delivered to each of "our" projects that were than under discussion. The date on one sheet is September 6, 1934. "This (Exhibiting.) happens to
2679 be one of more office pad momoranda." It would not help or explain any of the other papers. If there is no objection, the witness said he would like to tear this up. These papers that he had just identified are all from his file. The witness is simply assuming from those initials "on here" that it was Mr. Chambers who prepared them but he was not certain. "I would rather have you ask him." That applies to all the papers.

Mr. Wooden: I will not make any offer at this time, your Honor. I have nothing further.

2680 The Witness: Mr. Wooden, may I bring up a question of whether or not I will be permitted to correct the testimony of Dr. Morgan on one small point in the testimony but rather important to us? He has asked me to request that permission. On page 2139 of the testimony, a reference is made to a letter from Arthur E. Miller, who is at present superintendent of our fertilizer plant. In the last answer made by the Chairman: "Yes. The T. V. A. Fertilizer Plant at Muscle Shoals, and this is a discussion of the possibility of using a part of the old fertilizer plant." I should like to change the wording "old fertilizer plant" to "nitrate plant No. 2." There was no such thing as an old fertilizer plant. That is important to us.

Mr. Wooden: That is a matter I brought up the other day.

Mr. Leisure: No objection.

Examinor Norwood: Yes.

Mr. Leisure: There seems to be an Exhibit 407. What happened to that?

Examiner Norwood: It was not offered.

2686 Washington, D. C.
Wednesday, February 2, 1938.

2717 CHARLES H. GARITY, was recalled as a witness, and having been previously sworn, testified further as follows:

Cross-Examination by Mr. Leisure.

Q. Mr. Garity, with reference to Exhibit 398-A. You have that exhibit before you?

A. Yes, sir.

Q. Does that refer to a protest to you from the Cement Code Authority about T. V. A. bids in March, 1934?

A. Yes.

Q. Now, isn't it true that an award was about to be made, Mr. Garity, in a few days, and the Code Authority there was merely calling the Government's attention to the fact that the award might go to a bidder who was acting in violation of the Code?

A. Yes, sir.

Q. In other words, the Code Authority was not
2718 passing judgment at that time? It was merely asking the T. V. A. officials to suspend action until the N. R. A. officials could determine whether there was a code violation, isn't that correct?

A. Yes.

Q. And now, on the bids of October 15, 1934, referring to Commission's Exhibit 401, you were asked whether these prices had some relation to a base. Do you recall that?

A. I do recall that question.

Q. Now, isn't it a fact that these bids came in after T. V. A. had sent a telegram to the bidders suggesting a mixiumum price?

A. Yes, sir.

Q. To be figured by formula method?

A. Yes, sir.

Q. And the T. V. A. itself suggested prices figured with reference to some base, isn't that so?

A. We suggested that we would pay a maximum price of $1.30 per barrel net f. o. b. mill.

Q. Correct.

A. That is, at mill. We did not indicate f. o. b. mill.

Q. Second nearest mill. That was the testimony?

A. The second low mill.

Q. So that the bidders were merely complying with the T. V. A. formula in that, weren't they?

2719 A. Well, they were given opportunity to comply.

Q. And when they did, they were complying with that formula?

A. Yes. In other words, the price was not higher than $1.30 base.

Q. Now, take another exhibit there. Will you just turn to it yourself,—Exhibit 402-A?

A. I have it here.

Q. You testified from that exhibit that the Penn Dixie had a minus figure of—I have got down here, .5235 from Clinchfield, Georgia?

A. If you don't mind, I would like to use my own.

Q. Certainly.

A. (Examining papers): Penn Dixie bid at their Clinchfield, Georgia plant,—that is a bid using their Clinchfield, Georgia plant as a base—for the Aurora Dam .5235 cents per barrel lower than the base of one bidder.

Q. Now, would you look at Exhibit 401;—just prior to that exhibit?

A. Yes.

Q. What shipping points did Penn Dixie indicate there?

A. Richard City, Kingsport, and Clinchfield.

Q. Richard City, Tennessee, Kingsport, Tennessee, and Clinchfield, Georgia?

A. Yes.

2720 Q. Now, in your experience as purchasing agent, you have not any doubt, have you, that the Penn Dixie would ship from the nearest mill in that case?

A. They would have shipped from the nearest mill. As a matter of fact, we considered bidding the price for that mill as complimentary rather than any idea on the bidder's part that we would place any business with that mill. We would have defeated our original plan of not permitting the cement companies to lose money.

Q. Precisely. And that figure of $.5235 would be purely an artificial figure?

A. We did not even consider it.

Redirect Examination by Mr. Wooden.

2721 Q. Will you explain what you meant there, Mr. Garity?

A. We established a price of $1.30 at mill as being a fair price to pay for our cement. That would not infer that the cement companies would bid that. Certainly they would not bid more, but we felt that there was a possibility that they might bid less.

Q. And so far as your arrangements with them were concerned, were they at liberty to bid less?

A. Yes, sir.

2722 Q. Mr. Leisure said something about a T. V. A. formula, this $1.30 being in accord with the T. V. A. formula. Did T. V. A. have a formula on the matter?

A. I think Dr. Morgan answered that perhaps better than I can, Mr. Wooden. The price was set for standard Portland cement, as I recall it, of $1.16, and there was added to that figure, another amount for the type B cement, which brought it up to $1.25, and I think Dr. Morgan's testimony is clear as to how they got to $1.30. I am not sure.

Q. Is that the only thing that you would put in the category of a T. V. A. formula?

A. If it can be called that. I would not call it that.

Q. You would not call it that?

A. No.

Q. Now, in this Penn Dixie matter and their Clinchfield plant, where you show in your compilation .5235 lower than base?

A. Yes. That was for the Aurora Dam. And that was some five or six hundred miles from the plant. We considered it a complimentary bid for that plant.

Q. What was the nearest Penn Dixie mill?

A. For that particular job, my impression is that Penn Dixie do not supply any cement for Aurora. No.

Q. What was their bid for the nearest mill?

A. You want to get a comparison of this 53 cents?

2723 Q. Yes.

A. Then we will stay at Aurora. (Examining papers.) Richard City, Tennessee, had a price of .2130 less than the $1.30 mill.

Q. And that was the nearest Penn Dixie mill?

A. The nearest Penn Dixie mill to the Aurora Dam.

They did not and are not furnishing cement for the Aurora Dam, or will not, I should say. That dam is not started yet.

Q. I wanted to ask you on direct and I overlooked it. Did some mills quote on a delivered price basis, and some on a destination cost basis?

A. I would have to examine the bids, Mr. Wooden, to answer that question correctly. I can tell you exactly what happened in two cases.

Q. Go ahead; that may answer.

A. In the Norris Dam, the price there is a destination cost to the Authority. For the Wheeler Dam, it is a delivered price.

Q. In the first case, it is destination cost price by all bidders?

A. I could not answer that without examining the complete file. I am thinking only of those companies that we placed business with.

Q. Was the destination cost bid accompanied by a so-called control clause providing the method by which
2724 the mill price for invoicing purposes should be arrived at?

A. I am still questioning that control clause. The only control clause in our document was a control that we had in there, and not put in by the bidder. In fact, I do not understand that control clause.

Q. Was there any clause put in by the bidders accompanying that government destination cost?
2725 A. Well, unfortunately, I do not have all the bids here.

Q. I beg pardon?

A. I do not have all the bids here. The original bids must accompany the fact voucher to the Comptroller's Office.

Q. Would that be in the contract?

A. Yes, it would be in the contract. You got the contract.

Q. Well, the contracts are in the record and they speak for themselves on that. You are not very clear in your own mind what that control clause means.

A. Even if it were there I do not believe I would have accepted it. It is a qualification of the bid, which possibly would cause the bid to be rejected.

Q. Did the Government destination cost include a land grant transportation factor?

A. In the case at Norris, we had a special unpublished rate. The Tennessee Valley Authority secured that rate.

Q. Was that made available to the industry?

A. That was made available to the industry; yes.

Q. By the T. V. A.?

A. Yes.

Recross Examination by Mr. Leisure.

Q. In regard to the T. V. A. formula, will you just look at this telegram, Exhibit 355-A, sent by Dr. Arthur
2726 Morgan, and will you read it and tell me whether or not you do not understand that to be the formula which was used in setting this price as you have already testified?

A. I feel reasonably sure that one could call that a formula, but I would not. It is a statement of fact.

Q. That is how the price was made up?

A. It may be a formula to the bidder, but it is not—

Q. Just read it out aloud.

A. "The T. V. A. intends not to build a cement plant if cement manufacturers quote a base price not to exceed $1.30 a barrel at mill plus freight to destination Stop Where only one mill enjoys lowest freight rate will consider above base price plus freight from second lowest freight point Stop It is to be understood that this is maximum that the Authority will consider and any quotation should be at or below figure last mentioned Stop It is our intent to build a cement plant if average price omitting Holston and French Broad Dams is higher than this Stop Rather than name a lower price we intend negotiating small differences where stating outside maximum Stop If any differences of understanding remain we suggest they be cleared up by conference before bids are submitted Stop It is also understood that any change in freight rates will be adjusted as provided paragraph 24 of the invitation."

Q. So, the T. V. A. did state a maximum price?
2727 A. Yes.

Q. And that was with reference to the basing point; namely, the second low or nearest mill?

A. Yes.

Redirect Examination by Mr. Wooden.

Q. You read the telegram. It said the T. V. A. would consider the acceptance of the second nearest mill as the base. It did not say "We lay down that condition," did it?

A. I do not know. We do not go—

The Witness: It was a condition by accepting the second low mill. That was a telegram, at a minimum of $1.30 base.

By Mr. Wooden:

Q. You did accept the lowest mill as the base?

A. Yes.

Q. But in that telegram you said you would consider it?

Mr. Leisure: I think the telegram speaks very clearly.

The Witness: I did not write the telegram. I knew the intent.

By Mr. Wooden:

Q. Do you know anything about the negotiations
2728 following that telegram and regarding the acceptance of the second nearest mill as the base?

A. As far as I know, there were no negotiations in which I took part. Dr. Morgan may have talked with Mr. Smith or the committee of those mills in the Valley. I do not know that.

Q. Do you know whether or not the cement companies proposed that second nearest mill as the base rather than the nearest mill?

Mr. Leisure: I think that is objectionable.

Examiner Norwood: Objection sustained.

Mr. Wooden: I do not see any possible ground for the objection. I am asking whether he knows whether or not—

Mr. Leisure: Here is a telegram, Your Honor, that sets out the final propostion that the T. V. A. is making.

Examiner Norwood: I think he may tell that. Objection overruled. What is the question?

(The reporter read the question.)

The Witness: I think it was agreed upon at a joint meeting between the Authority's committee and a committee of the cement manufacturers that we were dealing with.

2729 *Recross Examination by Mr. Zimmerman.*

2730 Q. Now, you have no difficulty with Marquette as far as obtaining f. o. b. mills from time to time, do you?

A. There was only one occasion when we asked for f. o. b. mill. That was in the February bid and I can answer that question specifically. As a matter of fact all bidders in this first invitation to bid, bid f. o. b. mill. Some went further and bid a destination price as an alternate.

2732 Q. That is just a typographical error then. On the bid of March 15, which was extended to March 19, which has been heretofore referred to as the Norris Dam—you have that information?

A. I can give you that information here.

Q. They did bid an f. o. b. mill price on that?

A. They bid f. o. b. mill on Norris and Wheeler, and on Wheeler they made an alternate bid for delivery at three different points.

2735 *Redirect Examination by Mr. Wooden.*

Q. Referring to Exhibit 397, being the bids opened March 19, 1934, did the Marquette Company bid f. o. b. mill there as all the other bidders did?

A. Yes. We required f. o. b. mill price, and they quoted f. o. b. mill in both instances. For the earlier job, they put an alternate in for destination.

Mr. Zimmerman: Were they low on any part of that bid?

The Witness: On the delivered cost or the delivered price to the Authority, they were not low.

Mr. Zimmerman: Pardon me. I did not mean to interrupt.

By Mr. Wooden:

Q. As I understood your testimony when you were here before, although all those bids in that case, including Marquette, were on an f. o. b. mill basis, they worked out to an identical delivered price, is that correct?

A. Yes.

Mr. Wooden: That is all.

Recross Examination by Mr. Zimmerman.

Q. That is, there was a difference in the delivered prices at the mill, but when you added the freight, they
2736 worked out so that the delivered destination cost was the same?

A. Our delivered price was the same.

Q. That is, treating the price as what it cost the government at destination?

A. Yes.

Q. So that it appeared that the companies had made a competitive price at the mill, allowing, however, for an adjustment to equalize the freights?

A. Well, it would appear that way. The fact is, that they did figure the destination cost, at least I assumed that they figured the destination cost and then worked back to establish the low price. That is the way that we arrived at our price.

Q. That is the way you would have done it. All right.

2743 EVERETTE MacINTYRE was thereupon called as a witness on behalf of the Commission and, having been previously duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

Q. Mr. MacIntyre, I show you two bound collections of papers marked for identification 408-A to blank, inclusive, and 409-A to blank, inclusive. Will you state what they are?

A. The files in the bound volumes of papers marked Commission's Exhibits 408-A to blank and 409-A to blank, are tabulations of prices which I found on file in the offices of the Cement Institute on June 22, 1934. The Institute at that time was serving, or an agent of the Institute known as the Code Authority was serving, under the Code of Fair Competition, and prices were filed with it during the N. R. A. and these are tabulations of prices so filed.

Q. Who made them?

A. I made the tabulations in connection with Mr. Henry Auding, who was also at that time an attorney for the Commission.

Q. Broadly state whether or not these were the prices on file or whether they were selected from prices on file?

A. These tabulations number 48, one for each
2744 State in the Union and, I believe, also one for the District of Columbia. They list as destinations, each of the county seats in the States, numbering something more than 3,000. They show the prices filed for each of those destinations by each of the cement manufacturers and the filed prices for such destinations.

The destinations of the county seats are, as I have stated, only about 3,000, while the prices filed were for more than 60,000 representing more than 300,000 individual filings.

Q. Now, Your Honor, I am not offering these papers at this time. They have just been identified by him, but I am showing the witness papers marked 410A and B, for identification, and I will ask him to state what they are.

Examiner Norwood: Those prices are marked 408 and 409?

Mr. Wooden: Yes, 408 and 409.

(Discussion off the record.)

Mr. Hershberger: If Exhibits for identification Nos. 408-A and 409-A are not to be introduced in evidence, then the testimony by the witness MacIntyre should be stricken except such answers as merely identify what the documents are. That part of his testimony which purports to show how many bids he found in the office of the Institute and what he found, should be stricken, un-
2745 less the exhibits are offered in the record and given to us with an opportunity to examine them.

Examiner Norwood: I will deny the motion—all of his testimony was of a descriptive nature—unless I find, upon examination of the record, that my idea about it is incorrect.

Mr. Wooden: I am going to offer now a portion of another collection.

Examiner Norwood: You mean a tabulation?

Mr. Wooden: No; it is an extract or portion, for the present purpose. The present question is, Will you identify these papers marked 410-A and B.

By Mr. Wooden:

Q. What are the papers marked 410-A and B?

A. I will have to have the last two exhibits offered for

identification. The paper marked for identification as Commission's Exhibit 410-A is a photostat of page 2098 of the volume which has been marked for identification as Commission's Exhibit 408-A.

The paper marked as Commission's Exhibit 410-B is a photostat of page 2143 of the volume which has been marked as Commission's Exhibit 409.

Mr. Wooden: I offer these papers marked 410-A and B.

Mr. Leisure: Your Honor, with respect to these
2746 two exhibits, marked for identification, 410-A and B, we object to them as being incompetent, irrelevant and immaterial and upon the further ground that they are taken from certain price filings that were filed with the code authority. The N. R. A. is not a party to this action and this material would not be binding upon any of the respondents in this case. We object to the offer.

Examiner Norwood: Received as marked.

(COM. EX. 410-A and B was offered and received in evidence.)

Mr. Wooden: I have nothing further of Mr. MacIntyre.

Mr. Leisure: May I ask a question about these documents which have been marked for identification?

Mr. Wooden: Sure.

Cross-Examination by Mr. Leisure.

Q. Mr. MacIntyre, I have not looked at these large documents, which are marked 408-A to blank and the other one, 409-A to blank. I suppose I can not look at them because they are only for identification. But, without looking at them, is this material covered by the subpoena, if you know?

A. That particular material is not covered by the sub-
poena, because these are not papers and documents
2747 that passed between the Cement Institute and any-
one. These are tabulations which were made up by me on the documents found in the Cement Institute.

Q. The basic material from which the tabulations are made up—is that covered by the subpoena?

A. It is probable that some of it may be. I would have to go back and read the subpoena before I could answer that specifically and definitely.

Q. Where did you get the basic material from which you made up these (exhibiting)?

A. Mr. George H. Reiter, who was at that time an official of the Cement Institute and an officer of the Code Authority, handed it to me. He and Mr. J. L. Nelson handed it to me and Mr. Anding.

Q. This is not one of the cases you referred to this morning in which the documents were refused?

A. No, there was no refusal on those particular documents we asked for at that particular time.

Q. When was this?

A. June, 1934. We completed that job on June 22. We did not remove all of the documents from the files until that date. For that reason we refer to the period as being June 22, 1934, because that is the date on which the job was completed.

Q. Do you know, or can you submit, Mr. Mac-
2748 Intyre, a list of any people who refused to furnish you documents in the cement industry?

A. Well, I mentioned—

Q. Within the last three years?

A. I mentioned some this morning. I do not say I could submit a complete list at this time.

Mr. Wooden: I do not want to be technical, but we are obviously going beyond the scope of the witness' direct examination. It is just getting him back into the controversial field we just left this morning.

Examiner Norwood: I think the point is well taken.

Mr. Leisure: It is very important, Your Honor. I do not mind stating that I was very much surprised at the statement that the companies refused to give full access to their files when investigators went around and I would like to go into that and find out what the facts are. If Mr. MacIntyre knows the facts and if he knows of any instances in the last three years, where he was refused any documents by any company, I would like to have that in the record.

Examiner Norwood: Counsel on both sides made statements in regard to that this morning and I see no reason for bringing that out on the witness stand by this counsel and I do not see it is relevant anyway. He has answered that, I think. Has he answered the last question,
2749 Mr. Reporter? Read that part of the record.

(The reporter read the portion of the record referred to.)

Examiner Norwood: I think that will do for that.

Mr. Leisure: How is that left? Does that mean he

will submit a list later? I would like to clear up what he meant this morning. He said they refused within the last three years.

Examiner Norwood: You can ask, as attorney in this case, to do that and he may or may not do just as he pleases, but any further cross-examination, while here as a witness, I shall exclude.

2750 (Discussion off the record.)

Examiner Norwood: Are there any further questions?

Mr. Wooden: Nothing further from me.

Mr. Hirshberger: I have a question or two.

Cross-Examination by Mr. Hirshberger.

Q. Mr. MacIntyre, will you please tell me what this tabulation means (indicating). In other words, I see here on 400-A a column of names which apparently is names of cities in North Carolina. Is that correct? At the left side of the paper (indicating)?

A. (Examining paper.) That is correct. That is on Exhibit 410-A.

Q. That is right. Next to the names of these cities in most instances, I find a figure written immediately to the right. What does that figure mean?

A. That is a price which had been filed on cards from which I took this information, which was filed for this particular destination alongside of which it appears by the companies under whose name the check marks appear.

Q. In other words, that is a price per barrel?

A. That is a price per barrel.

Q. Is that an f. o. b. price or a delivered price?

A. That is a quotation or a filing for that particular destination.

2751 Q. In other words, it is destination price?

A. It is a destination quotation. As filed in this office.

Q. I don't know whether I understand exactly what you mean by differing with me in words. Is it a price at destination as distinguished from a price at mill, f. o. b. mill?

A. Well, some people would probably call that a price. There have been so many definitions of "price" given out by different people, that I do not know what you are talking about when you speak of price. I do know, how-

ever, that when a person quotes a figure, it is a quotation. I have not heard but one definition on that so far, and for that reason I state that that is a quotation filed for those particular destinations.

Q. But you don't know whether it is an f. o. b. mill quotation or a destination price?

A. It is a quotation on cement laid down at that destination.

Q. Laid down at that destination. And you don't know whether it is a price that might have a control clause in the bid, or not?

A. The cards from which that tabulation was shown, did not indicate that there were any control clauses involved at that particular time on those particul quotations at the destinations involved.

Q. I see. Now, immediately to the right of these figures, appear names, National, Georgia, etcetera. Are
2752 those the names of manufacturing companies?

A. The names of manufacturing companies who had filed quotations for those destinations.

Q. And then in the columns below those names and opposite the names of the cities are check marks. Does that mean that the check marks in any particular column of the companies which are checked, bid the same price?

A. All of them had filed exactly the same quotation that appears in the column alongside the destination if the check mark appears under the name.

Mr. Hershberger: Thank you.

2757 HUGH E. WHITE was thereupon recalled as a witness on behalf of the Commission and, having been previously duly sworn, was examined and testified as follows:

Direct Examination by Mr. Wooden.

Q. Mr. White, did you hear the statement which Mr. Leisure made concerning a check of the tabulation that is in the record as Exhibits 11 to 12?

A. I heard the statement, but I can not exactly say that I am clear as to what it was.

Q. Well, some reference was made to the omission in the tabulation of bids submitted by certain companies. Will you explain if there were such omissions, why they were made?

A. Exhibits 11-A and B and 12-A and B are abstracts of the bids submitted in bulk by the South Carolina Division of Purchase and Contract, and it was the intention to tabulate all of the bids, and I think we did tabulate all
2758 of the bids, including that of the National Portland Cement Company, for the year 1936, which the envelope showed arrived too late to be considered.

Q. What company is that when you say National Portland Cement Company?

A. As distinguished from the National Cement Company at Birmingham, Alabama, and the other a Pennsylvania corporation.

Q. Did both of those companies submit bids on that particular letting?

A. They did for the year 1936, and both were shown.

Q. What about the other cases? Which National was it?

A. Only the National Cement Company of Birmingham submitted bids for 1937.

Q. Was that tabulated?

A. It was. I might say that the key to the abstract is missing and that the National Cement Company of Birmingham was given key No. 49 and the National Portland Cement Company of Pennsylvania was given key No. 50.

Q. Now, Mr. Leisure gave the names of some companies whose bids were not tabulated. If that is the case, will you explain why they were not?

A. The caption of this tabulation says it is a comparison of destination prices of certain producers with those of others. Where there was one bid at destination
2759 there was no basis of comparison and that bid was ignored, of course.

Examiner Norwood: Will you read that answer?

(The answer is read.)

By Mr. Wooden:

Q. Have you any other statement in the way of explanation as to your tabulation of those North Carolina and Virginia bids to which Mr. Leisure's statement referred?

A. I think that what I have said is a complete explanation. I might say, in addition, as I recall Mr. Leisure's statement this morning, he referred to 118 bids of the National Cement Company. We find 118 bids contained in Exhibit 11-A.

Q. Which National company was that?

A. The National Cement Company of Alabama.

2775 Washington, D. C.,
Thursday, February 3, 1938.

2778 HUGH E. WHITE was recalled as a witness on behalf of the Commission, and testified further as follows:

2793 *Cross-Examination by Mr. Leisure*

Q. Mr. White, with reference to Exhibit 11 that you were discussing yesterday in your testimony—Exhibits 11 and 12: May I just see that, Mr. Wooden? This tabulation 11-A is a tabulation which was prepared by you, was it not, Mr. White?

A. That is correct.

Q. And as to these companies that bid and the bids were left out of this tabulation, the statement I read was correct as to the companies that were left out? You merely explained why they were left out? Is not that correct?

A. I think not. I think I was under the impression at the time that the bid of the National Portland Cement Company of Pennsylvania was omitted because it apparently had been received too late for consideration. I found, on examining the exhibit as submitted, that it was included there as Column 50.

Q. And for the other National, the bid was received in time?

A. That is right, and those bids were received and listed under key 49.

Q. Our point is whether all are in there. I was
2794 reading certain ones that were not in there.

A. The bids of all the producers—

Q. I am just now talking about the other National only. When you made up this exhibit here, in which you checked that—first, is that your handwriting on the side there (indicating)? Look at Column 49 on Exhibit 11-A. Now, is all the data there reflected in your tabulation of Exhibit 11-A? That is the point of my question.

2795 A. It was not intended as a complete statement of all of the prices quoted, as the caption will show.

Q. And by the caption you mean the following, Mr. White: "A comparison of destination prices of Portland

cement quoted by the various producers to the North Carolina Division of Purchase and Contracts, February, 1936, as shown by files submitted by Mr. W. C. Betts." Is that the caption that you have reference to?

A. That is right.

Q. And do you feel that when any one read that caption, they would be on notice that you had used only part of the bids and that part had been left out?

A. Where there was no basis of comparison, I would assume that would be what they would understand from the caption, yes.

Q. And that the tabulation had reference to comparison only as to individual bids, and did not have reference to comparison with other bids at other times?

A. That is right.

Q. So that then the statement that I read was correct as to the fact that others were omitted?

A. Oh, yes.

Q. And you are giving the explanation as to why they were omitted?

A. That is right.

2796 Mr. Leisure: I think that is all.

Redirect Examination by Mr. Wooden.

Q. Just one further question to clarify that. Do I understand that these cases where you omitted the bids were bids delivered at towns or destinations where there was only one bid for those particular towns?

A. That is right. Where we found no basis for comparison with other bids.

Mr. Wooden: All right; that is all.

(Witness excused.)

GEORGE H. REITER, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

I am at present a vice-president of the Universal Atlas Cement Company, Chicago. I have been in that capacity since August 1st last, but I have been with the com-
2797 pany since April 15, 1937. The company headquarters of the department that I am in is at Chicago. I

spend my time there largely in connection with the company's affairs. I also visit other offices of the company. The range or scope of my duties as vice-president is I am in general charge of sales. Immediately before going with the Universal Atlas Company, I was general manager and secretary of the Cement Institute. I was made general manager in June 1935 and secretary in December 1935. Prior to June 1935, my connection with the Cement Institute was as manager of the Chicago Division from
2798 February 1, 1930 to December 31, 1930 and from August 1, 1933 to June 1935. Between 1930 and 1933 I was sales manager of the Missouri Portland Cement Company. Prior to my first connection with the Chicago Division of the Institute, I had been for 15 years in the brick business, but I had a slight prior cement experience from 1912 until 1915 when I was an engineer employed by the then Universal Cement Company. Between 1915 and 1930 I had no connection with the cement business at all.

Q. Did any one succeed you as manager of the Chicago division after you left it in 1930?

A. I left December 31, 1930, and I was succeeded at that time by my office engineer, a man by the name of Foster.

Q. During the period from August, 1933 to June, 1935 —you covered that period, but I am a little in doubt
2799 now—just what were you doing during that period?

A. Well, I was, as I have said, I was manager of the Chicago division of the Cement Institute. I also had other duties in connection with the Code Authority.

Q. What were they? What position did you hold?

A. I was secretary of the Cement Code Authority from the time it became effective, which was December 7, 1933, until December, 1934, at which time I was made chairman of the Code Authority and acted in that capacity until the end of the code period.

Q. Who selected you as secretary and later chairman of the Code Authority?

A. So far as I know, I was selected as secretary by Mr. B. H. Rader, who was chairman of the Code Authority, and I was elected as chairman of the Code Authority by the Cement Institute as provided for in the Cement Code.

Q. Do I understand that the Code Authority itself, the members of the Code Authority, were selected and elected by the Cement Institute or any body representing the Cement Institute?

A. They were elected by the board of trustees of the Cement Institute which had established itself, that is the Cement Institute, to the satisfaction of the N. R. A. as a representative body of the industry.

Q. How was the expense of the Code Authority
2800 and your employment as secretary and manager raised?

A. Do you mean all expenses or just my salary?

Q. Well, if you have to distinguish, tell us both?

2801 A. The expenses of the code authority and those of the Chicago division of the Cement Institute, who occupied parts of the same office, were very carefully separated. Employees such as stenographers and clerks who worked a part of their time for one and the other, kept time sheets supervised by the office manager, and their salaries were divided in proportion to the time spent. The rental was divided upon the basis of space occupied by the employees. Certain employees whose time could not be well or accurately divided, such as the telephone operator and the office boy, were divided in accordance with my idea of what was right and proper.

Now, so far as my salary was concerned, at the beginning, I believe that for a period my salary was continued to be paid entirely by the Cement Institute, but the code authority took an increasing amount of my time, and therefore I believe soon, 50 per cent of my salary was charged to the code authority and 50 per cent to the Chicago division of the Cement Institute, and later that percentage charged to the code authority was raised because substantially all of my time was given to code authority matters.

Q. And the code authority expenses, how were they raised?

A. They were raised by an assessment upon all members of the industry for code authority affairs, such assessment being approved by the N. R. A., and that assessment, may I add was on the basis of shipments, per
2802 barrel shipments, in other words.

Q. Is that the same basis, per barrel of shipment basis, that the Institute uses for its support also?

A. That is right.

Q. Following the time in June, 1935, when you became general manager of the Institute—is that right?

A. That is right.

Q. Did you also occupy for a time a position known as chairman of the Trade Practice Committee?

A. I did.

Q. For what period of time did you occupy that position?

A. I think I was made chairman of the Trade Practice Committee at the same meeting in June, 1935, and I continued until well in that year, probably at the December meeting, when the Trade Practice Committee was discharged.

Q. To what extent did the Trade Practice Committee contain the same personnel as the Code Authority which preceded it?

A. The personnel of the Trade Practice Committee was exactly the same as the last Code Authority, the Code Authority membership having been changed during the code period.

2803 By Mr. Wooden:

Q. Mr. Reiter, during the period you were giving half your time to the Institute affairs and half of your time to the Code Authority affairs, did you have some people in the office who gave all of their time to Institute affairs?

A. Yes, I had several of them.

Q. Who were they and what did they do?

A. I do not know that I can name them all. One principal employee was, again, this Mr. James Foster, who was with me in 1930 and he was again office manager for the Cement Institute. There were other clerks. I can not remember them nor can I tell you how many.

Q. What were the things which the Institute was doing during that period that the Code Authority was not doing?

A. Bearing in mind that this was a division office of the Institute, it handled the filing and checking and dissemination of contract information. Do you want me to describe that in detail?

Q. No, just cover the various activities or functions which the Institute was performing at that time.

A. That activity required most of the work of the Institute office itself and occasioned most of its costs. Another principal activity was the issuance and servicing of freight rate books in a certain area of the country, there being another freight rate bureau in another part of

2804 the country, which handled part of that work.

Q. The price filings, so-called, were a code authority activity, were they not?

A. Yes, sir.

Q. In the filing of prices at destinations, did the members make use of the freight bureau publications?

A. Well, I could not say. If you want my opinion, they—

Mr. Hershberger: No; I object.

Mr. Leisure: If the witness knows, I would like him to state it, but if it is based on his opinion, we object.

Mr. Wooden: It is more than an opinion, Your Honor. This man was connected with the Code Authority and the Institute.

Examiner Norwood: I will instruct the witness to base his answer purely on his knowledge. Read the question.

(The reporter read the question.)

The Witness: The answer is that I do not know of my own knowledge.

By Mr. Wooden:

Q. I will ask you whether, in the filing of destination prices with the Code Authority, of which you were secretary, and later general manager, the members were not supposed to use the freight rate publications of the Institute?

2805 A. In answer to that, we were not concerned with how they arrived at the prices they filed with the Code Authority. We accepted the prices as filed and handled them as they were received.

Q. Do you mean to say that you do not know whether the members, who used the freight bureau service of the Chicago Division, used that service in the filing of the destination prices which went to the Code Authority of which you were also secretary?

2806 The Witness: I don't know.

By Mr. Wooden:

Q. You were not interested in whether they did or did not at the time?

Mr. Leisure: That is objected to.

Examiner Norwood: Sustained.

By Mr. Wooden:

Q. While you were manager of the Chicago division, was there a general manager of the Institute elsewhere?

A. There was during the year 1930, but there was not during the latter period at which I was manager of the Chicago division.

Q. Well, was there a manager of other divisions than the Chicago division?

A. That is right.

Q. And who were they?

A. The manager of the Northeast division was H. C. Lundborg. The manager of the Kansas City division was Baxter D. McLean.

Mr. Leisure: Can we get the dates fixed on that, Mr. Wooden? I am not clear.

By Mr. Wooden:

Q. Will you make it clear?

2807 A. I don't know what the situation was during the period from December 31, 1930 until August 1, 1933, so that my answer applied to that period after August 1, 1933.

Q. Up to when?

A. Up to October 1, 1935, I believe, in both cases.

Q. Were you the only general manager of the Institute that has occupied any such place as general manager?

A. No, as I said, there was a general manager other than myself in 1930.

Q. And who was that? Was that Lundborg?

A. No, that was Luther G. McConnell.

Q. Were you manager at Chicago while he was general manager?

A. That is right.

Q. Was there a division of the Institute located somewhere in the Southeast?

A. During 1930, there was a Southeastern division located at Chattanooga, of which John Dalby was the manager, and I don't recollect just when he severed his connection.

Q. How long did that division at that point, Chattanooga, continue?

A. As I say, I do not know, Mr. Wooden, but I believe that it closed early in 1931, before the middle of 1931.

Q. What was the territory represented by the Chicago division?

A. The United States Bureau of Mines' districts 2808, 3, 4, 5, and 7. Do you want me to—

Q. (Interposing) Just roughly indicate what area of the map that would take in?

A. Well, it includes Western Pennsylvania, West Virginia, Ohio, Kentucky, Indiana, Michigan, Illinois, Wisconsin, Minnesota, North Dakota, South Dakota, Iowa and Eastern Missouri.

Q. Can you give us the territory of the Kansas City division?

A. The Kansas City division covered United States Bureau of Mines' district No. 8, which was Arkansas, Western Missouri, Oklahoma, Kansas and Nebraska.

Q. And the Southeastern division, what was its territory?

A. Its territory was everything south of the State of Kentucky and West Virginia, including the State of Virginia and east of the Mississippi River.

Q. And the Northeastern division, what was its territory?

A. Its territory consisted of the United States Bureau of Mines' districts 1 and 2, which included the New England States, New York, Eastern Pennsylvania, New Jersey, Delaware, Maryland, and the District of Columbia. I believe that is all.

Q. I believe you said the Southeastern Division ran through the southern States to the Mississippi River. Did you mean to exclude Louisiana west of the Mississippi?

2809 No, it included Louisiana, the river crossing through Louisiana.

Q. It included the whole State?

A. It includes the whole State.

Q. Was there any division covering the Mountain States or including any of the Mountain States?

A. I have mentioned all of the divisions of the Cement Institute.

Q. You had members, however, out in that territory and on the Pacific Coast?

A. Well, I say that that answer applies to the time from 1933 on. We had no Pacific Coast members in 1930, as I recollect.

Q. Did you mention the State of Texas as being included in any division?

A. No.

Q. Did you have members there?

A. We had members in Texas, yes.

Q. Why was Texas not included in any division?

A. Because these divisions were self-organized by members of the industry who had mills within those divisions to do special and additional work not covered by their general dues and the Members in Texas did not elect to do any of these special activities.

2810 Q. Was there some feeling among the Texas members that it was not advisable, from the standpoint of the Texas laws, to become affiliated with the division of the Institute?

A. Have you any particular time in mind, Mr. Wooden?

Q. No, any time during the history or life of the Institute. It goes back to 1929, I believe.

A. I will say that in 1935, after the Schechter decision we had resignations from two members in the State of Texas.

Q. Resignations from what?

A. From the Cement Institute.

Q. My question was about membership in the divisions.

A. They were not members of any division.

Q. I asked whether you knew of any feeling on their part, having reference to the Texas laws, with reference to their affiliation with a division?

A. I have no direct knowledge, but in resigning from the Institute, I think they gave as a reason, legal advice that a certain Texas law would make it advisable for them not to continue their membership in the Cement Institute.

2815 Q. Mr. Reiter, were there any activities of the Cement Institute which were temporarily discontinued by it during the code period and which were assumed during that period by the Code Authority?

A. I am sure there were not.

Q. Had the Cement Institute any system of filing prices before the time of the Code?

A. No.

Q. What new functions or activities, then, did the Code Authority assume that had not been previously carried on by the Institute?

A. Well, the Code Authority was, of course, the administering body for the Code and they worked at that job. They did follow a lot of activities which were not related at all to those of the Cement Institute.

Q. Did the Cement Institute have a code of ethics?

A. Yes.

2816 Q. Prior to the time of the N. R. A. Code?

A. Yes.

Q. Were some of the provisions of the code of ethics included in the N. R. A. Code?

A. I cannot answer that, Mr. Wooden. I ~~do~~ not know.

Q. If that should be the case, then the Code Authority would be administering some things which the Institute previously had had in its code of ethics to handle?

A. I do not know how to answer that question.

Q. It all depends on whether the N. R. A. Code included provisions of the former Institute code, does it not?

A. If the Code, as approved by the N. R. A., was identical with the code which was adopted by the Institute back in 1929 and if the Cement Institute attempted to administer that former code, none of which is a fact, then it would be true. (Laughter).

Q. Do you know whether or not, Mr. Reiter, the code of ethics of the Institute, prior to the N. R. A., covered subjects which were the same as covered by the N. R. A. Code?

A. Mr. Wooden, I do not have a very clear recollection of that old code. I have testified that I was manager of the Chicago division at that time, and I had a copy
2817 of the Code. Now, I was not charged with any duties so far as that code was concerned, and it was not impressed very much on my memory.

Q. But you are quite sure it was not identical with the provisions of the N. R. A. Code?

A. Yes, because I am quite familiar with the N. R. A. Code and I know that—

Q. (Interposing) But you would have to know both before you could be sure they were identical, would you not?

A. I have, of course, made a study and was constantly working with the N. R. A. Code, and I have read the old code and I am sure the N. R. A. Code had many provisions in it that the old code did not.

Q. I am sure of that too.

A. Yes.

Q. My question was whether or not the old code of ethics of the Institute did not contain a number of subjects and rules on certain subjects which were then covered over into the N. R. A. Code?

A. I would have to refresh my memory by reading that old code.

Q. Without some more familiarity with the scope and content of the previous Institute code, how can you be sure as to how much similarity there was between it and the N. R. A. Code?

2818 Mr. Leisure: I object to this question. This is his witness. There is no ground for cross examination so far shown.

Examiner Norwood: I think he is calling for an explanation there.

Mr. Leisure: It is clearly cross examination of his own witness.

Mr. Wooden: I insist, your Honor, it is not cross examination in any sense. It is merely an attempt to understand the basis for the witness' answer.

2819 Examiner Norwood: I regard it as eliciting an explanation, and the objection is overruled. Read the question.

(The question is repeated.)

The Witness: I can probably mention several things which I am sure were not in the old code.

By Mr. Wooden:

Q. I am sure you can, too.

A. One of them was a provision for open price filing. And the provisions for administering the code by a code authority.

Q. Do you recall anything in the old code about diversions in transit?

A. I do not, but I do know that they were in the new code.

Q. To what extent did you participate in the deliberations and negotiatnons that led up to the adoption of the N. R. A. code?

A. Not at all, Mr. Wooden.

Q. You became affiliated with the Code Authority in August, 1933, is that right?

A. No, with the Cement Institute in August, 1933.

Q. When you were giveing some of your time to the Institute affairs and some of your time to the Code Authority attairs, did you sign communications in your capacity as representative of both organizations?

2820 A. I signed communications for the Chicago division of the Institute as manager of the Chicago division, and communications of the Code Authority as secretary or chairman, as the case might be.

Q. We have in evidence here, Mr. Reiter, photostatic copies of various telegrams from the Code Authority files that contain the notation "Charge the Cement Institute". Will you explain how that came about?

A. Well, when the code was approved and the Code Authority elected, the Code Authority itself had no funds or no credit. The Cement Institute had credit already established, and we used the credit of the Cement Institute at Chicago for the benefit of the Code Authority. I would like to make it plain that our system in the office, so far as telegrams were concerned, was to keep a check copy of all telegrams which were checked against the bill at the end of the month and proper charge being made to the Code Authority by the Cement Institute, whichever was proper.

Q. Did the Institute set aside or appropriate any funds for the use of the Code Authority?

A. In the Chicago office of the Cement Institute, we worked on a revolving fund which was furnished us by the general office at New York, and against which we drew checks accounting therefor at the end of the month, and we used that money also for Code Authority; accounting
2821 for it in the same way at the end of the month.

Q. The general office that you refer to, is that the general office of the Institute?

A. That is right.

Q. At New York?

A. At New York.

Q. Were there any unliquidated obligations of the Code Authority at the time it discontinued operating?

A. No.

Q. Did the Code Authority use the office equipment and furnishings of the Institute?

A. They did use what facilities we had, and we did buy some more equipment. I can not recollect just what that equipment was charged to

Q. When you say "we", that "we bought more", do you mean the Institute?

A. I mean the office of which I was in charge. I do not know whether it was all purchased by the Cement Insti-

tute or partly charged to the Code Authority or how it was done.

Q. Did the Institute take over any of the office equipment of the Code Authority when it discontinued?

A. Yes, the equipment stayed there in the office of the Cement Institute.

Q. What became of the records of the Code Authority? Did the Institute take them over?

2822 A. The files of the Code Authority and the records continued for a time in the Cement Institute office, and then many of them, not all, were stored in Chicago for a considerable period.

Q. Stored at whose expense?

A. Well, in that case there was no expense. It was in the building that we had our office in.

Q. And was that storage a part of the rental privileges of the Institute?

A. As a matter of fact, we borrowed storage space from the Lehigh Cement Company, who also had an office in that building and who had storage space rented. It was an addition to their office rent, I believe.

Q. Are such Code Authority records still there?

A. No.

Q. Do you know what became of them?

A. The Code Authority records or a large part of them were destroyed at the time that I moved my office from Chicago to New York or shortly before that.

Q. And when was that?

A. I think that that time would be about September, 1936. Now, we did not destroy all of them, but much of them we did.

2823 Q. When the trade practice committee, of which I understand you were chairman—

A. (Interposing) That is right.

Q. (Continuing)—began its operation, did it intend or seek to carry on the complete line of activities of the Code Authority?

A. What we attempted to do in the interim period after the Code, was to carry on so far as possible, on a voluntary basis, the activities as prescribed by the previous N. R. A. Code. We intended to establish a list of trade practice rules which would be acceptable to the industry.

Q. Well, did you put out anything in the nature of a

publication of trade practice rules of the sort you have just indicated?

A. No, the trade practice committee soon realized that the industry was not agreeable to going along with any Code or set of trade practice rules on a voluntary basis or otherwise, and the trade practice committee itself was not in agreement on which such rules should include and it signed off with a compendium, to which I presume you refer, and which was called The Compendium of Marketing Methods, I believe, in the cement industry.

Q. That was not published, was it, until some six months after the trade practice committee began functioning?

A. I do not recollect. It was published in the same
2824 volume with the articles of association of the Cement Institute, but I do not recollect just when it was published.

Q. During the Code Authority period, did you handle complaints filed by different members as to alleged violations of the Code?

A. We did.

Q. Did you continue to handle similar complaints through the trade practice committee, after the code was discontinued?

A. We tried to continue for a short period, but nobody was interested and our correspondence was not answered as it had been in the code days, and we very soon forgot that part of it.

Q. You carried it on for some months, at least, did you not?

A. I should say that while we made an effort, it substantially stopped immediately after the code.

Q. I suppose, of course, your general recollection on such matters is not to be taken as against any specific papers that are—

A. (Interposing) I do not pretend to be exact in the time.

Q. Now, you continued the filing of prices under the regime of the trade practice committee for some time?

A. We offered to receive prices filed on a voluntary basis and did do that for several months after the code was ended.

Q. And during that period, when complaints were
2825 offered—if complaints were offered—to the effect that the filed prices were not being adhered to, did you investigate the circumstances?

A. We would have during the early part of that period. As I say, Mr. Wooden, I do not know how long that was continued.

Q. Was there a period during your connection with the Institute, and prior to the N. R. A. Code, during which the activities of the Institute were materially curtailed?

A. You say during my connection with the Institute?

Q. Yes.

A. No, there was a curtailment, but it was during the time that I was out of the Institute; in others words, from some time in 1931 to 1933, at the time that I was out.

Q. Where were you then?

A. I was sales manager of the Missourt Portland Cement Company.

Q. What were the circumstances that led to that curtailment?

A. There were a number of resignations from the Cement Institute of which I had knowledge immediately before I left Chicago, and from that I deduct that it was a reduction in membership and interest in Institute work.

Q. Do you know what circumstances led to the resignations?

A. I do not.

Q. Was the Missouri Company a member during that period?

A. They were.

2826 Q. And did not resign?

A. And did not resign.

Q. Now, referring again to the divisions of the Institute which you have named, how were those divisions constituted as to organization?

A. Well, they each had a manager and staff and except that the Southeastern division had no office manager or staff since some time in 1931, immediately after I left the Cement Institute—

Q. (Interposing.) Was there anybody such as an executive committee or board that had anything to do with the operations of the divisions?

A. There was, of course, a board of trustees of the

Cement Institute which had primary authority over all officers of the Cement Institute.

2837 Q. Was there representation of the divisions on the Institute board of trustees?

A. Yes, in this way. The personal of the board of trustees of the Cement Institute was that one member should be elected to the board from each of the twelve Bureau of Mines districts in the United States. Those twelve district trustees in turn elected seven trustees at large. The whole board elected the officers, which consisted of the president, one or more vice presidents, a secretary and a treasurer, and those officers, with the exception of the secretary, were ex officio members of the board.

Q. Did each division have a chairman or head other than the manager?

A. No.

Q. Did the trustee of the Institute from a particular division exercise any particular official function in the division as such?

A. In 1930, when I came to the Cement Institute, there was some committee in Chicago, in the Chicago Division, under whom I directly worked.

Q. Was that called an Advisory Committee?

A. I believe it was.

Q. Were there similar committees in the other divisions?

A. Well, I do not know.

Q. Can you say whether or not the various divisions selected members representing them on the Institute

2828 Board of Trustees?

A. I did say that. I told how they were elected.

Q. Did the divisions have meetings of their respective members from time to time?

A. Yes.

Q. Who was recognized as the presiding officer of such meetings?

A. Well, generally, so far as the Chicago division was concerned, the chairman was elected at the time. I do not believe I can answer so far as the other divisions are concerned.

Q. In other words, you might have a different chairman at each meeting? Would that follow?

A. Yes.

Q. What did this Advisory Committee under which you

acted in Chicago, have to do with the affairs of the division?

A. Bearing in mind that this Advisory Committee, as I stated, existed only in 1930, I looked to them for immediate authority on the things that I wanted decided promptly, so that I presume that they were authorized to act between meetings of the members of the Chicago division.

Q. Something in the nature of an Executive Committee?

A. I should say so.

Q. You spoke of prompt action through them. Were they located in such a way that you could get prompt
2829. advice from them?

A. That has been a long while ago and I only remember two members of that committee right now. Both of those members were in Chicago. There were others, but I have forgotten who they were.

Q. Did you attend from time to time meetings of other divisions as well as of the Chicago division?

A. I attended very few meetings of other divisions at any time. I did attend some, I think, after I became general manager.

Q. Did members of divisions other than the Chicago division from time to time attend meetings of the Chicago division?

A. They may have. They would have if they were in town.

Q. Were there some questions that arose occasionally that involved the members of two divisions?

A. I presume there were?

Q. Con you say what such questions were?

A. No, but I can conceive that a member having a plant in two divisions would be equally interested in the activities of both divisions and want those activities similar. I do not know of any special instances.

Q. Would members of one division who shipped into the territory of another division pay dues to the other division into which it shipped?

A. That is right.

2830 Q. Were those dues on the same basis as the members of the home division, so to speak?

A. That is right.

Q. Did that require some report of the amount shipped

into the territory from the other divisions in order that the proper collection of dues might be made?

A. Yes.

Q. What was the nature of some of the problems that you referred to the Advisory Committee there in Chicago in 1930?

A. Well, I recollect that one of my first duties was to prepare a budget for this Advisory Committee, and it was revised at their suggestion before being presented to a meeting of the membership. From that budget, information on shipments into that territory was prepared, and a suggestion as to the rate of dues per barrel of shipments.

Specifically I do not recall anything other than that.

2831 Q. Mr. Reiter, did you receive a subpoena calling for the production of various documents here on yesterday?

A. I did.

Q. To what extent have you been able to comply with the terms of the subpoena?

A. Mr. Wooden, I have no papers with me for the reason that I did not have custody of those files nor access to those files since April 15.

Q. Since what date?

A. April 15, 1937.

Q. Who has succeeded to the custody of them since then?

A. I presume the officers of the Cement Institute and the chief of these, of course, is the president, Mr. S. W. Storey.

Q. Did you make some effort toward seeing if you could obtain the papers notwithstanding your lack of personal custody of them?

Mr. Leisure: I object to that, your Honor! There is no reason for his making an effort if he did not have custody of the files.

Mr. Wooden: I am not implying that he should. I merely want to know.

Mr. Leisure: We have the further objection that it has already been stated of record that the witness did

2832 not have possession of the papers. I do not see the necessity of taking up time on this.

Examiner Norwood: Answer the question.

The Witness: I advised the president of the Cement Institute and the general counsel that I had such a subpoena and the extent of that subpoena.

By Mr. Wooden:

Q. And who was the president?

A. Mr. Storey.

Mr. Leisure: Your Honor, we see no useful purpose in simply having the witness come here empty handed and putting the Commission to the difficulty of subpoening someone from Chicago to bring the papers here, knowing they wanted them with the witness, and if Mr. Wooden is now calling for them, I am producing them now to your Honor for such inspection as your Honor may wish. I do not know whether he wants them now or not.

Mr. Wooden: Yes. I would like to know if there is anyone present, however, who can state that the papers produced represent a full compliance with the subpoena served on Mr. Reiter?

Mr. Leisure: I thought one of the things we were
2833 going to try to do was to cooperate so as to avoid having to pay for railroad fares between here and Chicago.

Mr. Wooden: True enough. I just wanted to know if any one happened to be here.

Mr. Schofield: I can identify Mr. Storey's papers that he has kept. I have been through his files and they are all here.

Mr. Wooden: Can you then state that they represent a complete compliance with the terms of the subpoena?

Mr. Leisure: No; he is not replying to a subpoena.

Mr. Wooden: I do not mean the terms of the subpoena as a subpoena, but as to the documents.

Mr. Leisure: You mean, are they here?

Mr. Wooden: Yes. I understand this is not in compliance with the subpoena, but a voluntary production of the papers.

Examiner Norwood: Are they not being produced under your agreement?

Mr. Leisure: I do not see why we banter with words. Mr. Wooden has asked for the papers and we are presenting them to your Honor. I do not know why we assume anything different from that.

Mr. Wooden: I do not know whether they are voluntarily produced or not. I am not clear myself.

Examiner Norwood: Off the record, Mr. Reporter.

2834 PHILIP H. SCHOFIELD, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

I am a lawyer employed by the office of Sidley, McPherson, Austin & Burgess in Chicago, which office is associate counsel of record for the Trinity Portland Cement Company, the Florida Portland Cement Company, the Signal Mountain Portland Cement Company and the Consolidated Cement Company, and is also of counsel of record for Mr. Smith W. Storey, the President of The Cement Institute.

Q. Did there come to your attention recently a subpoena that was addressed to Mr. George H. Reiter?

A. Yes, sir.

Q. Will you state how it came to your attention?

A. Mr. Storey, the president of the Cement Institute, gave me a copy of it.

Q. Did you then undertake to locate the papers that were described in the subpoena to Mr. Reiter?

A. Yes.

2835 Q. Will you state just how you did that?

A. I asked Mr. Storey where the files of the Institute were, and he said that no secretary has been elected to succeed Mr. Reiter, and that since Mr. Reiter had resigned, he had been keeping a file as the executive officer of the Cement Institute, and that even prior to Mr. Reiter's resignation, he had kept a file both as senior vice president and as president of the Cement Institute, and that those files were in Chicago and were in his office, and he said that the general files of the Cement Institute which Mr. Reiter had kept as the general manager of the Institute were, he thought, were in the possession of general counsel for the Institute. So I then undertook to see to it that the files which Mr. Storey had in his possession and which he had kept as an officer of the Institute were made available.

Q. And were they made available to you?

A. Yes, they were.

Q. And what did you do with them?

A. I examined the files and I brought them to Washington.

Q. The entire set of files?

A. The entire set of files that Mr. Storey kept both as

senior vice president and as president of the Cement Institute.

Q. And do I understand you made no selections, but just brought the entire lot?

A. I brought the entire lot of files.

2836 Q. The files which you have brought here, do they represent the entire Institute files in so far as you were able to get them?

A. They were all the files of the Institute which I could bring within my own physical custody. They were all that were available at Chicago.

Q. You were informed that others had been turned over to general counsel for the Institute?

A. Yes, that was Mr. Storey's impression. I made that clear.

Q. Do you know when the other files were so turned over?

A. No, I do not, Mr. Wooden.

Q. What period of time do these files cover that you are submitting?

A. They commence with Mr. Storey's election as senior vice president of the Institute, which I believe was in June, 1936, and they continue down to July 3, 1937.

Mr. Wooden: Your Honor, the witness, as I understand it, turned over this collection of files which he has described to Mr. Leisure, and Mr. Leisure as I understand it is willing to proffer them at this time.

Mr. Leisure: I am tendering them because you have asked for them, Mr. Wooden: I am tendering them to the Examiner in the ordinary court procedure. I may say

2837 that there were other officers which had files of the Institute, which have sent them in to us, and we will give the files from those officers as well as those which this witness brought.

Examiner Norwood: Off the record.

(Discussion off the record.)

Examiner Norwood: Have you a list of those papers?

The Witness: Was that question directed to me?

Examiner Norwood: Have you a list of those papers?

The Witness: I have three files. I think I can identify them if I can see them.

Mr. Wooden: Do you have a list of all the papers that are in the package?

The Witness: No.

Mr. Wooden: Let me ask you, on the record, Mr. Scho-

field this question: Do you know whether or not the papers which you brought to Washington are in the package which Mr. Leisure has now handed up to the table here?

The Witness: No, I do not.

Mr. Wooden: You do have, however, as I understand it, a list which would enable you to determine whether the papers you brought to Washington are in that package?

2838 The Witness: Yes.

Examiner Norwood: Have the counsel agreed on any method of handling these papers?

Mr. Wooden: I am prepared to make a suggestion as to the method of handling. I do not know that it is agreeable to everybody; it seems impossible to get the agreement of everybody. I understand the witness to say that he does nt know what is in this package or whether his files are in this package.

By Mr. Wooden:

Q. Do you know whether your files that you have produced are in this package, Mr. Schofield?

A. I do not know definitely. I do not think they are. I was looking around the courtroom, and I think I see them setting on a table here.

Q. Well, are you in a position to produce the papers which you brought here?

Mr. Zimmerman: Has he had a subpoena served on him?

2839 By Mr. Wooden:

Q. Are you in a position now to produce them physically without regard to the circumstances?

A. Yes, I am.

Q. Will you now produce the papers which you brought.

Mr. Leisure: If Your Honor please, in regard to this complete file here that this witness has, it seems to me without taking the time of the hearing, that we could get together with Mr. Wooden on the files and agree upon such papers that are going to be offered, and not have a complete file offered in evidence. I do not think Mr. Wooden wants that.

Mr. Wooden: No, I did want them marked for identification, however.

Mr. Leisure: This (indicating) is the complete file. Well, any way you want to do it.

By Mr. Wooden:

Q. How many bundles are there?

A. There are three clips there. I would like to make a statement with reference to those three files.

Q. All right.

A. Those are the complete files of Mr. S. W. Storey. I have not attempted to segregate out any items from those files in response to the subpoena, but they are complete.

Mr. Wooden: Well, Your Honor, I would suggest
2840 that the reporter give each of the three files a number for identification.

(The documents referred to were marked for identification "Commission's Exhibits 312-A to blank, 413-A to blank, and 414-A to blank.")

Mr. Wooden: The papers from Mr. Storey's files which Mr. Schofield has produced have been marked Commission's Exhibits 412-A to blank, 413-A to blank, and 414-A to blank and—

Mr. Leisure (interrupting): Pardon me. Since it is a fact, Your Honor, that the witness was shown this subpoena duces tecum and brought these papers as a result of reading the subpoena, I think that should be shown in the record that he has produced them here as the result of the subpoena being served.

Mr. Wooden: I thought the record already showed that. If you do not think it does satisfactorily—

Mr. Leisure (interrupting): I think it does, now.

The Witness: I thought it did. I thought I stated that I had read the subpoena and brought them in response to it.

By Mr. Wooden:

Q. Now, reverting to this unopened package of unidentified documents and contents, as I now understand it, by
a process of exclusion, the papers which the witness
2841 has produced and which have been marked 412 to 414, it follows that none of his papers are in the unopened package, is that right?

A. Yes.

Q. The papers in the unopened package, as I understand it, have been produced here by Mr. Leisure from the files of other officers of the Institute, and other offices than Chicago?

Mr. Leisure: And the Chicago office. It and others.

Mr. Wooden: The papers in the package represent an

attempt to comply, so far as possible at the present time, with the descriptive matter of the subpoena duces tecum, one of which was served on Mr. Reiter?

Mr. Leisure: Yes, as I stated in the beginning. We saw no use in your serving a new subpoena, and we are attempting to comply with that subpoena and bringing them in here, not waiting until you serve a new one in Chicago.

Mr. Wooden: And as other papers coming within the general terms of the subpoena description become available, that they will be submitted also, is that right?

Mr. Leisure: Yes, sir, that is quite correct.

2842 Mr. Wooden: If Mr. Leisure wishes, I am willing to stipulate, as suggested by Mr. Zimmerman, to the effect that these papers may be treated as having been produced in partial compliance with the subpoena and, based on all those considerations, your Honor, I suggest that the next number for identification be assigned to this unopened package and that someone responsible on the Commission's staff, such as Mr. MacIntyre, will undertake to make sure that no papers that are not now in the package will ever be confused as having been in this package and that identifying marks will be put upon the papers in the package by him.

2844 Examiner Norwood: Now, I shall instruct that the package be marked for identification 415 and direct that they be turned over to leading counsel for the Commission and any counsel which the respondents may designate to go over together.

Mr. Leisure: We have tendered—

Examiner Norwood: (Interposing.) I give them into the custody of both.

Mr. Leisure: We have tendered them to your Honor and are subject to your Honor's orders as to the disposition of the documents. It was my impression that the correct procedure was to have Mr. Wooden offer such papers as he wants, and having issued a subpoena duces tecum, he is assumed to know what papers he wants.

Examiner Norwood: Itake it that when he checks them off and finds the papers called for in the subpoena are produced there, they will be stricken from the subpoena and he will not require them in that subpoena. What counsel will you designate to receive these along with Mr. Wooden?

Mr. Leisure: I will have one of our men attend. I do not know which one it will be.

2855 Washington, D. C.,
Friday, February 4, 1938.

2873 Mr. Hal Smith: Mr. Examiner, Mr. S. T. Crapo, vice president and secretary of the Huron Portland Cement Company, was served with a subpoena duces tecum—

Mr. Smith: Mr. Crapo responded to the subpoena and is in the city. He was in attendance yesterday, but under the statement of Commission counsel about the situation, that the production of papers for the party served would be accepted as a compliance with the subpoena, I have the papers here. I desire to state that if I had been called as a witness, I would testify that the subpoena when received by the party named therein was delivered to myself as his counsel, and by me after examination, delivered to other officials of the Huron Portland Cement Company of which Mr. Crapo is secretary and treasurer. Four clerks were immediately designated, and the subpoena was turned over to them together with an abstract of the subject covered in it, and of course the list of names, and

2874 they were instructed to investigate all the files of the company and to produce all the papers that they determined from that subpoena to be within its terms. The requirement that they had was in fact broader than the subpoena, for instance, they were instructed to bring forth all correspondence and data referring to basing point, which is of course broader than the particular references to the basing points that were covered in the subpoena; and so through the entire fourteen different subjects.

They produced a mass of material which was then examined by Mr. Rooney who is named in the subpoena, and by Mr. Crapo and his counsel, myself; and upon that examination a considerable part of that material was eliminated as not being described in the subpoena. All the remaining material is here to be produced.

I should say that we excluded, not with the intention of not producing it if it was not required—we did not bring the mimeographed copies of the proceedings of the Cement Institute at its meetings. If that is desired, they can be produced, but there was a mass of those, and I had assumed that they would be produced perhaps from other witnesses and you would not need a duplication of all of

that material, but any correspondence with the Institute was produced.

Mr. Wooden: If you will pardon me. If you refer
2875 there to the minutes of the Institute, or the minutes of the Trade Practice Committee of the Institute, I think we would like to have them.

Mr. Smith: They are mimeographed copies that were delivered to us. We can produce all of them. Some of them, I assume, have something in them about these various subjects, but I had assumed that they would be delivered by other witnesses, and have not brought them.

Mr. Wooden: No doubt there will be duplications, but we should like to have them.

Mr. Smith: Well, we will bring them then.

There was eliminated on my instruction, all of the correspondence with the Code Authority, although on the letterheads, as I recall it, the Cement Institute was mentioned as the agent of the Code Authority. But I construed the subpoena as not requiring that correspondence, but that also could be produced, and should we be furnished with a description of any other papers, correspondence or documents, with a description sufficient so that we can identify them, and if they are in existence and in our files, they will be produced; but I do say that the examination made was intended to produce everything within the subpoena.

The documents are not numerous and they have been assembled in bundles, so that they do not have to be
2876 marked, but are now produced as I have said, first, the complete file of the Lawrence I. MacQueen service.

Mr. Wooden: May I ask your Honor that this file just produced be given the next number for identification?

Examiner Norwood: It is marked Commission's Exhibit 416-A to blank for identification.

(The file referred to was marked "Commission's Exhibit 416-A to blank," for identification.)

Mr. Wooden: Before I forget it, Mr. Smith, I would like to say that as to files of the Code Authority or communications with the Code Authority, that we would like to construe the subpoena as covering those.

Mr. Hershberger: The Code Authority is not mentioned, and I just wonder whether there is a contention on the part of counsel that the correspondence with the Code Authority is within the terms of the subpoena.

Mr. Wooden: In so far, at any rate as persons named in the subpoena happen to be members of the Code Authority, I should say it clearly came within it as being within the period called for by the subpoena.

Mr. Leisure: Your Honor, in the interest of having the same procedure followed through all the exhibits, Mr. Smith happens to be here, but there are many
2877 counsel who will not be here when the papers arrive. If marking them for identification means that the counsel for the Commission takes possession of them, then I want to be sure that our objection is preserved on the record, and that I may make clear that my objection is that no impounding order has been issued, and until an impounding order is issued, we are not compelled to give up possession of these documents and the custody of those documents.

Examiner Norwood: They are presenting them here in this hearing.

Mr. Leisure: To the Examiner.

Examiner Norwood: In response to the subpoena duces tecum.

Mr. Leisure: To the Examiner.

Examiner Norwood: Well, the Examiner is going to mark them for identification and let counsel on both sides have them at proper times.

Mr. Leisure: Well, does that mean that counsel for the Commission will take them and have custody of them?

Examiner Norwood: Yes. They are required here for his use.

Mr. Leisure: Then we just note our exception to that.

Examiner Norwood: Yes.

2878 Mr. Smith: In producing them, I of course produce them in compliance with the subpoena, and they are delivered to the Examiner for the purpose of demonstrating that there has been a compliance made to the subpoena, and that without yielding possession, and they are not for delivery and inspection. I understand your Honor's ruling and I save my exception to that.

Examiner Norwood: Yes.

Mr. Smith: And I so limit the offer and the production in accordance with Mr. Leisure's school of thought in the matter as stated by him.

Mr. Leisure: Let me point out what the subpoena says with respect to what I have just said:

"You are hereby required to appear before John W.

Norwood * * and you are hereby required to bring with you and produce and deliver to him."

Examiner Norwood: I am receiving them.

Mr. Smith: I also produce the correspondence between the Huron Portland Cement Company and the Aetna Portland Cement Company and its officers, which I believe consists of 37 different sheets. I would like to take but a moment to have the record show the dates of the letters, and then they can be marked. January 3, 1933, January 4, 1933, April 11, April 11, April 12, May 2, 1933,
2879 May 4, May 10, May 29, May 31, June 9, June 19, June 15, August 1, August 4, August 9, October 5, October 3, September 30, October 9, June 14, 1935, June 21, June 29, June 28, August 5, August 2, memorandum dated October 25, 1935, December 24, 1935, December 20, 1935, and July 9, 1936. Those will be given a number, I assume?

Examiner Norwood: Mark them for identification 417-A to KK.

(The documents referred to were marked "Commission's Exhibits 417-A to KK" for identification.)

Mr. Smith: Now, to refresh my recollection as to a statement that was made by the witness Cree, my memory is that he testified there was exhibited to him by Mr. Johnson a letter signed by Mr. Crapo recommending or suggesting his discharge.

Mr. Wooden: No, I do not think it went that far; simply a letter that he got a glimpse of in which as I recall it, Mr. Crapo said he did not think that Harold would have done such things, or that he made some mistakes, or something of that sort; but I do not think there was any testimony by Mr. Cree that it suggested his discharge.

Mr. Smith: Well, in any event, the file that I have just now offered contains all of the correspondence with the Aetna, and there is no such letter in the files
2880 of Huron unless it is one of those that have been submitted here.

Mr. Wooden: All right, sir.

Mr. Smith: I next submit carbon copy of a letter dated July 29, 1936, from the Huron Company, signed by S. J. Crapo to Mr. B. R. Affleck, President of Universal Atlas Cement Company. Attached to it is a carbon copy of another letter dated August 5, 1937, to the same person, and

again attached thereto is one dated August 13, 1937, from Mr. Affleck to Mr. Crapo.

Mr. Wooden: Will the next number for identification be assigned to these papers?

Examiner Norwood: Mark them Exhibit for identification 418-A to G.

(The documents referred to were marked "Commission's Exhibit 418-A to G for identification.")

Mr. Smith: I next produce a letter addressed to the sales manager of the Huron Portland Cement Company, dated New York, March 13, 1937, signed "Arthur R. Burns." Attached to it I deliver carbon copies of a letter signed Blaine Smith addressed to numerous individuals, among them A. J. Rooney, sales manager of the Huron Portland Cement Company. And still attached to that is a copy of a letter addressed to Dr. Arthur R. Burns, carbon copy with no signature, and still again attached
2881 to that is a letter dated March 2, 1937, on the letterhead of the Universal Atlas addressed to Mr. John Sulzner, and no signature, and a list of individual names attached to that and finally what purports to be a copy of a letter dated February 16, 1937, to Mr. Blaine Smith signed by Arthur R. Burns.

Examiner Norwood: That will be marked Exhibit 419-A to blank for identification.

(The documents referred to were marked "Commission's Exhibit 419-A to blank for identification.")

Mr. Smith: I next deliver a bundle of letters and documents which have been assembled together because they all are communications from Builders Supply Associations and associations of kindred objects, addressed to the Huron Portland Cement Company, having reference to sales to dealers. There are in that bundle, if I have counted them correctly, 15 such communications from the Indiana Lumber & Builders Association, 2 from the Indiana Builders Supply Association, 27 from the Michigan Builders Supply Association, 4 from the Building Material Institute of Cleveland, 4 from the Ohio Builders Supply, 1 from the Builders Supply Dealers Association, 1 from the West Virginia Lumber & Builders Supply Association, 3 from the Builders Supply Dealers Association of Wiscon-
2882 sin, 1 from the National Federation of Builders Supply Association, 1 from the Wisconsin Retail Dealers Association, 1 from the New York State Builders Supply.

I do not vouch for the accuracy of those figures, but these are all those from such associations relating to the purview of the subpoena in that respect that were found in our files.

Mr. Wooden: Will these be given the next identification number?

Examiner Norwood: They will be marked 420-A to blank for identification.

(The documents referred to were marked "Commission's Exhibit 420A to blank for identification.")

Mr. Smith: We have one letter from the Wolverine Cement Company to the Huron Portland Cement Company dated December 17, 1934.

(The letter referred to was marked "Commission's Exhibit 421 for identification.")

2883 The next bundle of correspondence is correspondence with the International Cement Corporation, consisting of a letter signed by Mr. Hogan, dated 6-20-33. Attached thereto is a carbon of a letter dated June 16, 1933, addressed to Mr. Harold S. Cree, sales manager of the Aetna Portland Cement Company, signed by Mr. J. F. Neyland, a letter from Mr. Struckmann, on the letterhead of the International Cement Corporation, to Mr. Rooney, dated May 10, 1933, carbon of letter to Mr. Struckmann from Mr. Neyland, under date of May 8, 1933, letter signed by Mr. Struckmann on the letterhead of the International Cement Corporation to Mr. A. J. Rooney, under date of May 4, 1933; carbon copy of a letter dated May 2, 1933, from the Assistant General Sales Manager of the Huron Portland Cement Company to Mr. Struckmann, and letter on the letterhead of the Huron Portland Cement Company under date of March 10, 1933, headed "Announcement to Our Customers."

Examiner Norwood: Mark that 422-A to blank for identification.

(The documents referred to were marked, for identification "Commission's Exhibits Nos. 422-A to blank.")

Mr. Smith: The next is a carbon copy of a letter dated September 5, 1933, from the Huron Portland Cement Company, S. T. Crapo, Secretary-Treasurer, to Mr.
2884 Charles F. Conn, President of the Cement Institute.

Examiner Norwood: Mark that 423 for identification.

(The letter referred to was marked, for identification, "Commission's Exhibit No. 423.")

Mr. Smith: The next is a bundle of correspondence consisting of the following:

Carbon copy of letter dated February 14, 1934, to Mr. G. H. Reiter, Manager Chicago District, the Cement Institute, from the Huron Portland Cement Company.

The same, dated February 9, 1934.

A letter from Mr. G. H. Reiter to Mr. D. T. Meyers, Traffic Manager of the Huron Portland Cement Company, dated February 6, 1934.

Carbon copy of letter from the Traffic Manager of the Huron Portland Cement Company to Mr. G. H. Reiter, of the Cement Institute, dated February 5, 1934.

A letter under date of March 19, 1934, from Mr. G. H. Reiter, Manager Chicago Division of the Cement Institute to Mr. D. T. Meyers, Traffic Manager of the Huron Portland Cement Company, inclosing a schedule of figures headed "Carload rates on Portland cement."

Carbon copy of letter dated March 16, 1934, from the Traffic Manager of the Huron Portland Cement Com-
2885 pany to Mr. G. H. Reiter.

A letter under date of February 28th from Mr. G. H. Reiter to Mr. D. T. Meyers, Traffic Manager of the Huron Portland Cement Company.

Carbon copy of letter from the Traffic Manager of the Huron Portland Cement Company to Mr. G. H. Reiter, dated February 27, 1934.

Examiner Norwood: Mark them 424-A to blank for identification, respectively.

(The documents referred to were thereupon marked, for identification, "Commission's Exhibits Nos. 424-A to blank.")

Mr. Smith: I produce also a bundle of three documents, being a carbon copy of letter dated September 18, 1935, from the Vice President of the Huron Portland Cement Company to Mr. G. H. Reiter, Chairman of the Trade Practice Committee of the Cement Institute.

The same dated July 8, 1935.

Mr. Zimmerman: I object to counsel for the Commission looking at any of these documents at this time.

Examiner Norwood: He can look at them—

Mr. Zimmerman: Not until they have been offered in evidence and passed upon.

Examiner Norwood: He may look at them.

2886 Mr. Zimmerman: I would like to be heard on that.

Examiner Norwood: Off the record, Mr. Reporter.

(Discussion off the record.)

Examiner Norwood: Proceed with the production of the papers.

Mr. Smith: The next is a letter under date of July 5, 1935, on the letterhead of the Cement Institute from Mr. G. H. Reiter to Mr. A. J. Rooney, Vice President of the Huron Portland Cement Company.

A letter under date of July 3, 1935, on the letterhead of the Cement Institute from Mr. G. H. Reiter to Mr. A. J. Rooney, Vice President, Huron Portland Cement Company.

Examiner Norwood: Mark that 425A to blank, respectively, for identification.

(The documents referred to were thereupon marked, for identification, "Commission's Exhibits Nos. 425-A to blank.")

Mr. Smith: The next is a file containing several bundles of documents, and documents, which is entitled "Plans for Sharing Available Business." It can be generally described as the file of the Huron Portland Cement Company containing the discussions of such a plant in connection with the Code.

2887 Examiner Norwood: Mark that 426-A to blank, respectively, for identification.

(The documents referred to were thereupon marked, for identification, "Commission's Exhibits Nos. 426-A to blank.")

Mr. Smith: Now, your Honor, I have made my statement as to the purpose for which they were produced, and I do not intend to open up subjects on which your Honor has ruled.

I am interested in just one thing which, from my standpoint, makes it necessary to carefully preserve on the record a more or less formal statement. I am one of those counsel who believes that, upon the tender of all these documents by a witness—aand this is a substitute tender as if the witness were here—that they thereupon, in proper practice, should all be marked and offered by the Government. I do not agree—and I am not stating this for the purpose of reopening the argument—that the Government has the

right to sort them out and offer parts. I think they all come in under the law, whether before the Commission or elsewhere, and this is not a mere academic position I am taking, because in the documents which have been produced here there is much evidence that is of benefit to the respondent and I am, of course, anxious that that
2888 be produced.

I would be reluctant to find myself in the position of having counsel sort out for the Government that which he thought bolstered his case and discard, for instance, the letter of July 26, 1936, which Mr. Crapo wrote to the Cement Institute complaining about the Institute doing nothing to fix up bad conditions—to find that I was not in a position to offer that.

So, I desire to exhause my remedies and preserve my rights, and now that they are produced, they should be introduced, when they are examined by counsel, either under Your Honor's direction or otherwise, and we then have the right to have them all put in evidence. I am not concerned that they go in now, but I am concerned that later, every document we produce be made a part of the record.

Mr. Wobden: Every document that is not offered by Counsel for the Commission will be returned, so that if you see fit, you may put it in.

Mr. Smith: That, of course, in a measure cures it, but sometimes it is of vital importance that documents relating to a particular subject all go in at the same time. That is of value to a trial lawyer in any case.

Examiner Norwood: Yes.

Mr. Smith: So, I again protest against the theory
2889 of Government counsel, which is that they can sort out these documents and even take them to the Commission. Now, that is indicative of the error of his argument and perhaps of his ways, that he thinks that part of this correspondence produced here and not offered in evidence, could be exhibited to the Judge that decides this case. He goes so far in his rights of examination that he makes that claim.

2890 I want to be sure that my record is perfect. I can insist later that these go in as a unit. Therefore, I am complying with the order and direction of the Examiner in producing the papers as you direct, but only for the purpose of determining now whether or not I have

complied with the subpoena and for the purpose of determining later whether they are material and relevant, insisting that upon examination of counsel for respondents they all must be introduced rather than piecemeal.

Examiner Norwood: I cannot follow counsel there. These papers which have been marked 416 to 426, A to blank inclusive, will be turned over to counsel for the Commission for whom they were subpoenaed and he may introduce or offer in evidence any he wishes and the ones he does not use in that way are to be returned to me and then will be returned to respondents.

2892 Mr. Smith: Just to be sure, your Honor, I have produced in response to the subpoena, the papers that have been marked 416-A to TT, 417-A to KK, 418-A to G, 419-A to J, 420-A to JJJJ, 421, 422-A to O, 423, 424-A to I, 425-A to D, 426-A to II.

2899 Mr. Leisure: Before we take up any other matter, may I say as to these papers—there may be some future discussion about them—we have a man here from Portland, Oregon to give evidence. I may say that yesterday I offered the papers and they are received and marked for identification, and I am not disposed to make any new offers today; they are here, and there they are. But before we take that up, I would like to dispose of the witness who wants to catch a train to Portland, Oregon, if there is no objection, at this time.

Mr. Wooden: I do want to take care of that gentleman, but I would like to get this point settled first, as to whether or not you are willing to produce and prof-

2900 fer the papers which you did yesterday on the conditions which I suggested or on what conditions you are willing to do it?

Mr. Leisure: I have nothing new to add, Mr. Wooden, to what the record shows yesterday, but I think that perhaps we might sit down after court adjourns at noon and probably come to some agreement that will be satisfactory to you or both of us. At the present time, I have nothing new to add to what was said yesterday.

Examiner Norwood: I thought you would do that.

2901 FRANK E. McCASLIN, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

I am Secretary-Treasurer of the Oregon Portland Cement Company of Portland, Oregon, and have occupied that position about a year and a half.

Q. Did you receive as secretary of the Oregon Portland Cement Company a subpoena duces tecum from the Federal Trade Commission?

A. I did.

Q. Calling for the production of certain documents described?

A. Yes, sir.

Q. What effort have you made to comply with the subpoena?

A. In the limited time available, I have gone through the records for the period covered by the subpoena, as thoroughly as possible, and have brought with me what papers I could find that I thought complied with the request of the subpoena.

Q. You have them here?

A. Yes, sir.

2902 Q. Do you have them in any classification or are they just a whole mass undistinguished?

A. I have one package of correspondence which I can submit as it is. The other package is our current price lists which are required in the operation of our business, and I would like to take them back with me. I have, however, made copies, which if it is agreeable to you, I would like to submit.

Q. You have made copies of those price lists?

A. Yes, photostatic copies.

Q. That will be entirely acceptable. Now, the envelope I am handing you, will you state what it contains?

A. It contains certain correspondence which I believe was required to be furnished by the subpoena.

Q. Relating to any particular subject?

A. No.

Q. You can not tell us what it relates to?

A. It covers various subjects.

Mr. Wooden: I will ask that the envelope be numbered.

Examiner Norwood: Let me see it for a moment.

(Counsel hands envelope to the Examiner.)

Mr. Leisure: Your Honor, I do not see how we can identify it by an envelope.

Mr. Wooden: I want the number carried through
2903 on the contents.

Examiner Norwood: It seems to me we are going to do as Mr. Smith did this morning and describe it. I think that would be the proper way to do it.

Mr. Wooden: That was entirely Mr. Smith's privilege to do so, but I do not see that we have to list these papers. They will all be numbered for identification and that will identify them as produced by this witness from the files of that company. Whether they are letters of a certain date and subject matter, Your Honor, will all come within the terms of the subpoena as near as the witness could interpret it.

Mr. Smith: Your Honor, I hope that they will be marked, for this reason, if nothing more, and that is the convenience of counsel. It is not convenient for counsel representing individual companies to attend at the offices of the Commission and from time to time examine all of these documents. And they ought not to be required to do that, but there might appear among those papers produced by this company, some in which we are interested. In other words, if they were described on the record, we could note that and confine our examination to those things.

Mr. Wooden: I want each paper numbered.

Mr. Smith: A number is hardly enough. I de-
2904 scribed mine in general subject matter. I would not be interested at all, for instance, in price lists in Oregon, but if they had price lists in Montana and Minnesota, I might be interested in them. In other words, I would like to have the information to permit me to reduce my search within some reasonable limits.

2905 Examiner Norwood: I think they could be definitely numbered, and I would welcome having them definitely numbered before they get out of my hands.

(Discussion off the record.)

Examiner Norwood: The papers just produced by the witness, consisting of 29 sheets of telegrams and correspondence and some circular matter, etc., enclosed in

an envelope, may be marked for identification Commission's Exhibit 427-A to CC, inclusive.

2908 The witness identified an envelope containing a large number of photostatic copies as price lists prepared by his Company and being used at the present time in the conduct of his business. As far as he knows, they are all price lists. The witness has the originals "here", which he wants to take back with him. The photostatic copies of these papers were marked for identifica-

2909 tion as Com. Ex. 428-A to blank.

By Mr. Wooden:

Q. Mr. McCaslin, do you produce these papers which you have identified, as being a full compliance with the terms of the subpoena?

A. As far as I was able to do in the time provided. If any other information shows up that we think is required under the subpoena, we will be glad to forward it.

2912 Mr. Leisure: Your Honor, I have the exhibits in mind that we had up yesterday. They consist of the Storey files, Exhibits 412, 413, and 414, and Exhibit 415 which is the Institute package.

Mr. Wooden and I have come to an understanding on that which I believe is satisfactory to both of us and which I will state, and if I miss anything, you tell me.

Each of us will designate a man who will take the files and they will go through them and when the Com-

2913 mission finds a file which they want, they will take that file out and have it photostated and then the original files will be returned to us and they will offer in evidence the photostat as a substitute for the original. In that way we will avoid photostating the entire file.

2915 Mr. West: I am appearing on behalf of George Killian, secretary and treasurer of the Pennsylvania Dixie Cement Corporation, who was served with a subpoena duces tecum to produce certain documents. We have only started the examination of our files, and I do not anticipate that that examination will be concluded for a great many weeks, certainly not within the time limit as fixed by the agreement of counsel yesterday. I can, however, start by making a partial compliance and tender of documents to your Honor, and I will proceed to do so.

Examiner Norwood: Off the record.

(Discussion off the record.)

Mr. West: I tender to your Honor, pursuant to the subpoena, the following documents:

Complete series of recent Cement Institute advertising between the dates of July 7 to August 27, 1934, being in a folder consisting of 8 pages and a cover.

Examiner Norwood: They will be marked Exhibit 429-A to I for identification.

Mr. West: A mimeographed memorandum headed "Ignorance Leads to Misconceptions."

Examiner Norwood: That will be marked Exhibit 430 for identification.

2916 Mr. West: A printed page of what purports to be an advertisement of the Cement Institute bearing the caption, "The Story of A B C."

Examiner Norwood: It will be marked Exhibit 431 for identification.

Mr. Zimmerman: There will be some alphabetical symbols used, I suppose on 429 and 430 for each sheet?

Examiner Norwood: 429 was stated to be A to I, and 430 and 431 are single sheets.

Mr. West: A letter dated July 31, 1934 from A. J. R. Curtis to Blaine S. Smith, President of the Penn Dixie Cement Corporation, and attached is a copy of a letter dated July 19, 1934 purporting to be signed by B. F. Affleck, Chairman of the Cement Institute, attached to which is a form and four printed pages which purport to be advertisements.

Examiner Norwood: How many does that make?

Mr. West: Seven in all.

Examiner Norwood: They will be marked Exhibit 432-A to G for identification.

2917 Mr. West: A letter dated July 18, 1934, from Max A Berns to Mr. Blaine S. Smith.

2918 Examiner Norwood: That will be marked, Exhibit No. 433 for identification.

Mr. West: Copy of an advertisement, one page, entitled, "Prolonging Our Lives."

Examiner Norwood: That will be marked Exhibit No. 434 for identification.

Mr. West: Copy of an advertisement entitled "Progress in Cement", one page.

Examiner Norwood: That will be marked for identification as Exhibit No. 435.

Mr. West: Copy of advertisement entitled "The Going Price", one page,

Examiner Norwood: That will be marked No. 436 for identification.

2919 Mr. West: Copy of an advertisement entitled "Keen Competition".

Examiner Norwood: That will be marked Exhibit No. 437 for identification.

Mr. West: Copy of a letter dated July 5, 1934, from B. F. Affleck to Blaine S. Smith, two sheets.

Examiner Norwood: That will be marked for identification as No. 438-A and B.

Mr. West: Mimeographed copy of a letter dated April 10, 1934, purporting to be signed by B. F. Affleck, Chairman of the Committee on Public Relations, two pages.

Examiner Norwood: That will be marked Exhibit No. 439-A and B for identification.

Mr. West: Copy of a letter dated April 10, 1934, signed by "The Committee on Public Relations", by B. F.
2920 Affleck, Chairman, to Blaine S. Smith.

Examiner Norwood: That will be received as Commission's Exhibit No. 440 for identification.

Mr. West: Copy of a mimeographed memorandum dated April 10, 1934, entitled "A Public Relations Plan for the Cement Institute", ten sheets.

Examiner Norwood: That will be marked for identification as Exhibit 441-A to J.

2921 Mr. West: Copy of a circular letter under date of March 21, 1934, signed by B. F. Affleck, Chairman of the Committee on Public Relations, attached to which are two carbon sheets, one containing an extract from an address by Honorable Harold L. Ickes, Secretary of the Interior and Administrator of Public Works, and the other an extract from remarks of Senator Nye of North Dakota before the United States Senate.

Examiner Norwood: They will be marked Exhibit 442-A to C for identification.

Mr. West: Carbon copy of what purports to be a circular letter from the Committee on Public Relatitons under date of March 26, 1934, consisting of two sheets.

Examiner Norwood: Exhibit 443-A and B for identification.

Mr. West: Mimeographed copy of "Changes In Price Terms", signed by G. H. Reiter, Chairman, Trade Prac-

tice Committee of the Cement Institute on the date of November 8, 1935—two sheets.

Examiner Norwood: Exhibit 444-A and B for identification.

2922 Mr. West: The same, dated October 25, 1935—one sheet.

Examiner Norwood: Exhibit 445 for identification.

Mr. West: The same, dated September 7, 1935.

Examiner Norwood: Exhibit 446 for identification.

Mr. West: The same, dated August 6, 1935.

Examiner Norwood: Exhibit 447 for identification.

Mr. West: The same dated August 5, 1935.

Examiner Norwood: Exhibit 448 for identification.

Mr. West: The same, dated August 3, 1935.

Examiner Norwood: Exhibit 449 for identification.

Mr. West: A letter dated July 15, 1935, entitled "General Letter Re: Government Purchases", purporting

2923 to be signed by G. H. Reiter, General Manager, the Cement Institute—three pages.

Examiner Norwood: Exhibit 450, A, B, and C for identification.

Mr. West: Circular letter dated June 24, 1935 purporting to be signed by G. H. Reiter, Chairman of the Trade Practice Comm. tee of the Cement Institute, relative to proposed price changes—two sheets.

Examiner Norwood: Exhibit 451-A and B for identification.

Mr. West: A file of papers, the first of which is an announcement from the Florida Lumber & Mill Work Association, Incorporated, Orlando, Florida, containing an announcement of that association with respect to certain practices.

Examiner Norwood: How many sheets?

The Witness: The file contains 10 sheets.

Examiner Norwood: Exhibit 452-A to L.

Mr. West: Copy of a letter dated April 10, 1937

2924 from the Carolina Retail Lumber & Building Supply Dealers' Association, to Mr. Ed. J. Head, Assistant Sales Manager of the Pennsylvania Dixie Cement Corporation, and purporting to be signed by E. M. Garner, Secretary—two sheets.

Examiner Norwood: Exhibit 453-A and B.

2925 Mr. West: Copy of a letter dated February 24, 1937, from the Alabama Building Material Institute,

Birmingham, Alabama, to Mr. R. H. Baker, Sales Manager, Penn Dixie Cement Company—two sheets.

Examiner Norwood: Exhibit 454-A and B for identification.

Mr. West: Copy of a special announcement of the Carolina Building Material Institute, dated December 5, 1935—five sheets.

Examiner Norwood: Exhibit 455-A to E for identification.

Mr. West: File relative to the Florida Building Material Institute, the first paper of which is a circular letter dated November 18, 1935. The file contains 16 pages including telegrams and correspondence.

Examiner Norwood: Exhibit No. 456-A to O, for identification.

2926 Mr. West: Copy of a letter dated August 22, 1935, from the Georgia Building Material Institute to the Penn Dixie Cement Company—two sheets.

Examiner Norwood: No. 457-A and B for identification.

Mr. Wooden: May I observe that I see no purpose served by this method of producing and identifying the papers. If counsel wishes to go through with it along that line, I do not mind.

Mr. West: I would not insist on doing this if it was understood that the documents I am now tendering would be introduced and marked in evidence. It is because of counsel's refusal to do this that I am insisting on the rule.

Examiner Norwood: Counsel has brought these here in response to a subpoena and he is delivering them as the documents called for. I think he has a right to have a description of the documents put into the record.

Mr. Wooden: I am not questioning his right. I
2927 am merely questioning the expediency of the method that is being followed.

Examiner Norwood: I do not think that is open to question.

Mr. West: A letter dated August 9, 1935, from the Southwestern Lumberman's Association, signed by J. A. Scroggs, President, to Blaine S. Smith, President of the Pennsylvania Dixie Cement Corporation, attached to which is a copy of a letter from Blaine S. Smith to Mr. Scroggs, dated September 23, 1935—five documents in all.

Examiner Norwood: Exhibit No. 458-A to E for identification.

2928 Mr. West: Copy of a letter dated August 2, 1935, from the Alabama Lumber and Building Material Association to Penn Dixie, one sheet.

Examiner Norwood: That will be marked for identification Exhibit No. 459.

Mr. West: Copy of a letter addressed to Pennsylvania Dixie by the New England Builders' Supply Association, dated June 3, 1935.

Examiner Norwood: That will be marked for identification Exhibit No. 460.

Mr. West: A circular letter dated April 29, 1935, from the Nebraska Lumber Merchants Association.

Examiner Norwood: That will be marked No. 461 for identification.

Mr. West: A letter from the Steuben County Builders' Supply Dealers Association, dated April 20, 1935, to Penn Dixie. The date should be 1935, as is apparent from the "Received" stamp.

2929 Examiner Norwood: That will be marked for identification No. 462.

Mr. Wooden: May I interrupt off the record—

(Discussion off the record.)

Mr. West: Copy of a letter dated April 19, 1935 from the Building Material Men's Association of Westchester County addressed to Penn Dixie, one sheet.

Examiner Norwood: That will be marked for identification No. 463.

Mr. West: Copy of a letter from the Wheeling District Builders' Supply Dealers' Association dated April 9, 1935, to Penn Dixie, one sheet.

Examiner Norwood: That will be marked for identification No. 464.

Mr. West: Copy of a letter from the New England Builders' Supply Association addressed to Penn Dixie, March 16, 1935, two sheets.

Examiner Norwood: That will be marked for iden-
2930 tification No. 465-A and B.

Mr. West: A copy of a resolution of the New England Builders' Supply Association, undated, one sheet.

Examiner Norwood: That will be market for identification as No. 466.

Mr. West: The same, one sheet.

Examiner Norwood: That will be marked No. 467 for identification.

Mr. West: A copy of a letter dated March 11, 1935, from the Iowa Association of Lumber & Building Material Dealers, addressed to Oscar Hunt, Penn Dixie Cement Corporation, two sheets.

Examiner Norwood: That will be marked No. 468-A and B for identification.

2931 Mr. West: Copy of a letter dated March 11, 1935, from the Builders' Supply Dealers Association of Wisconsin to Walter Wing.

Examiner Norwood: That will be marked No. 469 for identification.

Mr. West: Copy of a letter dated March 11, 1935, from the Iowa Association of Lumber and Building Material Dealers to Penn-Dixie, two sheets.

Examiner Norwood: That will be marked No. 470-A and B for identification.

Mr. West: Copy of a document entitled "Protest", addressed to the Penn Dixie by certain dealers in Portland Cement in Milwaukee, Wisconsin, two sheets.

Examiner Norwood: That will be marked No. 471-A and B for identification.

2932 Mr. West: Copy of a letter dated February 27, 1935, from the Virginia Lumber & Building Supply Dealers Association to Penn-Dixie.

Examiner Norwood: That will be marked No. 472 for identification.

Mr. West: Copy of a letter dated February 22, 1935, from the Shreveport Building Material Association, Shreveport, Louisiana, to Penn-Dixie.

Examiner Norwood: That will be marked No. 473 for identification.

Mr. West: Copy of another letter between the same parties, dated February 12, 1935.

Examiner Norwood: That will be marked No. 474 for identification.

Mr. West: Copy of another letter between the same parties dated February 1, 1935.

Examiner Norwood: That will be marked No. 475 for identification.

2933 Mr. West: The same, dated January 18, 1935.

Examiner Norwood: That will be marked Exhibit 476 for identification.

2934 Mr. West: A letter from the Builders Supply Association, Racine, Wisconsin, to Penn Dixie, dated February 20, 1936.

Examiner Norwood: That will be marked Exhibit 477 for identification.

Mr. West: Copy of a letter dated February 8, 1935, from the Middle Atlantic Council of the Builders Supply Association to Penn Dixie.

Examiner Norwood: That will be marked Exhibit 478 for identification.

Mr. West: A circular letter undated from the Onondaga County Association of Builders Supply Dealers.

Examiner Norwood: That will be marked Exhibit 479 for identification.

Mr. West: A memorandum entitled "Copy of Dispatch To Your Cement Manufacturer" dated January 30, 1935.

Examiner Norwood: That will be marked Exhibit 480 for identification.

2935 Mr. West: Copy of a letter dated December 12, 1934, from the Building Supply Dealers Association of Greater Boston, to Penn Dixie.

Examiner Norwood: That will be marked Exhibit 481 for identification.

Mr. West: The same dated December 5, 1934.

Examiner Norwood: That will be marked Exhibit 482 for identification.

Mr. West: Letter dated December 14, 1934 from the Louisiana Retail Lumber and Building Material Dealers Association to Penn Dixie.

Examiner Norwood: That will be marked Exhibit 483 for identification.

Mr. West: A circular letter from the same dated December 4, 1934.

Examiner Norwood: That will be marked Exhibit 484 for identification.

2936 Mr. West: Copy of a letter dated November 23, 1934, addressed to Penn Dixie, Chattanooga, Tennessee, by the Retail Lumber Dealers of Southeast Louisiana.

Examiner Norwood: That will be marked Exhibit 485 for identification.

Mr. West: Copy of a telegram dated November 17, 1934 from the Northeast Louisiana Lumber & Building Material Dealers Association to Penn-Dixie.

Examiner Norwood: That will be marked Exhibit 486 for identification.

Mr. West: A letter dated July 16, 1934 from the Louisiana Retail Lumber and Building Material Dealers Association to Penn Dixie.

Examiner Norwood: That will be marked Exhibit 487 for identification.

Mr. West: A circular letter from the same dated September 14, 1934.

Examiner Norwood: That will be marked Exhibit 488 for identification.

2937 Mr. West: A one sheet, four sides, "Tentative Code of Fair Competition", from the Southern Builders Supply Assocation.

Examiner Norwood: That will be marked Exhibit 489 for identification.

Mr. West: A memorandum dated August 4, 1933 from the Central Georgia Retail Lumber & Building Supply Association to Penn-Dixie.

Examiner Norwood: That will be marked Exhibit 490 for identification.

Mr. West: A letter dated January 8, 1935, from the West Virginia Lumber and Builders Supply Dealers Association to Penn-Dixie.

Examiner Norwood: That will be marked Exhibit 491 for identification.

2938 Mr. West: An original telegram dated January 2, 1935 from the Syracuse Dealers Association to Penn-Dixie.

Examiner Norwood: That will be marked Exhibit 492 for identification.

Mr. West: Copy of a letter dated December 5, 1934, from the Retail Lumber and Building Material Dealers Association of Jacksonville, Florida, to Penn-Dixie.

Examiner Norwood: That will be marked Exhibit 493 for identification.

Mr. West: Letter dated July 13, 1934 from the Alabama Lumber and Building Material Association to Penn-Dixie, attached to which are four letters, making an aggregate of five.

Examiner Norwood: That will be marked Exhibit 494-A to E for identification.

Mr. West: Copy of a letter dated September 26, 1933

from Penn-Dixie to Mr. S. W. Storey, attached to which is a chart entitled "Cost and Production Statistics, District No. 6".

2939 Examiner Norwood: That will be marked Exhibit 495-A and B for identification.

Mr. West: Letter dated March 31, 1933 from the Mississippi Valley Lumberman, Minneapolis, to Penn-Dixie.

Examiner Norwood: That will be marked Exhibit 496 for identification.

Mr. West: A memorandum dated August 6, 1934 from George Kilian addressed to B. F. Affleck and others, attached to which is a letter dated July 27, 1934, from Price, Waterhouse & Company to Mr. Kilian, and a document entitled "Report of the Projected Costs of Cement to be Manufactured and Sold by Plants Serving the Tennessee Valley Authority Area for the years 1934, 1935, and 1936". The last document containing, including the cover, five pages.

Examiner Norwood: And with two pages in addition, making seven. That will be marked 497-A to G.

Mr. West: Copy of a letter dated July 31, 1934, purporting to come from the Pennsylvania Dixie Cement

2940 Corporation, to B. F. Affleck and others, two sheets.

Examiner Norwood: That will be marked Exhibit 498-A and B for identification.

Mr. West: Copy of a letter from Penn-Dixie to Mr. B. F. Affleck dated September 25, 1934, attached to which is a copy of a letter to Mr. Carl Yawger, dated September 22, 1934.

Examiner Norwood: That will be marked Exhibit 499-A and B for identification.

Mr. West: Copy of an executive letter from the Cement Institute, dated December 14, 1935, three sheets, attached to which is a circular letter from the same dated October 8, 1935, a letter from the Cement Institute to Mr. Smith of October 1, 1935, copy of a telegram from George F. Coffin, President of the Cement Institute to the Honorable Jesse Jones, October 1, 1935, a copy of a letter from Blaine S. Smith to Mr. C. Boettcher, dated June 8, 1935, and a letter from Mr. Boettcher to Mr. Smith dated May 24, 1935, in all eight sheets.

Examiner Norwood: That will be marked Exhibit 500-A to H for identification.

2941 Mr. West: Copy of a letter dater April 26, 1933, from Blaine S Smith to Mr. George F. Coffin, attached to which is a copy of a letter from Mr. Coffin to Mr. Smith dated April 24, 1933, two pages.

Examiner Norwood: That will be marked Exhibit 501-A and B for identification.

Mr. West: Copy of a letter from Pennsylvania-Dixie to Mr. F. E. Guy, dated May 1, 1936.

Examiner Norwood: That will be marked Exhibit 502 for identification.

Mr. West: Copy of a letter from the Universal Atlas to Penn-Dixie, the 29th of April, 1936.

Examiner Norwood: That will be marked Exhibit 503 for identification.

Mr. West: Copy of a letter from E. S. Gubernator to Mr. D. B. Green, Florida East Coast Railway, March 7, 1936.

2942 Examiner Norwood: That will be marked Exhibit 504 for identification.

Mr. West: A letter dated October 25, from the General Traffic Manager of the Florida Portland Cement Company to Mr. R. V. Pitt, three sheets.

Examiner Norwood: That will be marked Exhibit 505-A to C for identification.

Mr. West: Copy of a letter of October 12, 1935, from E. S. Gubernator to Mr. J. E. Tilford, Southern Freight Association.

Examiner Norwood: That will be marked Exhibit 506 for identification.

Mr. West: Copy of a letter, October 11, 1935, from the Universal Atlas to Mr. E. S. Gubernator, two sheets.

Examiner Norwood: That will be marked Exhibit 507-A and B for identification.

2943 Mr. West: Copy of a letter from Gubernator to Oliver, Southern Railway System, October 11, 1935, two sheets.

Examiner Norwood: That will be marked Exhibit 508-A and B for identification.

Mr. West: A letter dated October 7, 1935, Penn-Dixie to Oliver, one sheet.

Examiner Norwood: That will be marked Exhibit 509 for identification.

Mr. West: A letter, October 4, 1935, from Florida Port-

land Cement Company to E. S. Gubernator and others, one sheet.

Examiner Norwood: That will be marked Exhibit 510 for identification.

Mr. West: A letter, September 30, 1935, *from* J. B. Johnson to Gubernator, attached to which is a letter dated September 27, 1935, Johnson to Tilford, two sheets.

Examiner Norwood: That will be marked Exhibit
2944 511-A and B for identification.

2945 Mr. West: Copy of a letted dated September 30, 1935, from R. J. Mahon to E. S. Gubernator—two sheets.

Examiner Norwood: Exhibit 512-A and B for identification.

Mr. West: Copy of a letter under date of September 27, 1935, from Gubernator to O. McD. Davis and E. R. Oliver—two sheets.

Examiner Norwood: Exhibit 513-A and B for identification.

Mr. West: Copy of a letter under date of September 28, 1935, from Gubernator to J. E. Tilford, two sheets, attached to which are four sheets of a memorandum—six sheets in all.

Examiner Norwood: Exhibit 514-A to F, for identification.

2946 Mr. West: Copy of a letter from Penn-Dixie, dated September 28, 1935, to J. E. Tilford.

Examiner Norwood: Exhibit 515 for identification.

Mr. West: Copy of a four-page memorandum entitled, "Information in Support of 4th Section Application", etc., dated September 28, 1935—four pages.

Examiner Norwood: Exhibit 516-A, B, C and D, for identification.

Mr. West: Copy of a letter dated September 17, 1935, from Penn-Dixie to Gubernator and others—one sheet.

Examiner Norwood: Exhibit No. 517, for identification.

Mr. West: Letter from Hermitage Portland Cement Company, dated September 9, 1935 to Penn-Dixie—one sheet.

Examiner Norwood: Exhibit 518 for identification.

2947 Mr. West: Letter dated September 9, 1935, from Lone Star Cement Corporation to Penn-Dixie.

Examiner Norwood: Exhibit 519.

Mr. West: Copy of a letter under date of September 10, 1935, from Penn-Dixie to C. N. Apgar, Traffic Manager, Alpha Portland Cement Company.

Examiner Norwood: That will be marked No. 520 for identification.

Mr. West: Letter from Gubernator to D. S. Browder, September 9, 1935.

Examiner Norwood: That will be No. 521 for identification.

Mr. West: Letter under date of September 7, 1935, from National Cement Company to Penn-Dixie.

Examiner Norwood: Exhibit 522 for identification.

2948 Mr. West: Copy of a letter September 7, 1935, from Penn-Dixie to Gubernator and others.

Examiner Norwood: Exhibit No. 523 for identification.

Mr. West: Letter of September 7, 1935, from Pennsylvania Dixie to H. E. C. Hawkins.

Examiner Norwood: Exhibit No. 524 for identification.

Mr. West: Copy of a letter under date of September 5, 1935 from Penn-Dixie to Gubernator and others.

Examiner Norwood: Exhibit No. 525 for identification.

Mr. West: Copy of a circular letter dated September 4, 1935, from Browder to Mr. J. E. Tilford—attached are certain other documents—seven sheets in all.

2949 Examiner Norwood: Exhibit No. 526-A to G for identification.

Mr. West: Copy of a letter dated August 20, 1935, International Cement Corporation, to Mr. H. E. C. Hawkins—one sheet.

Examiner Norwood: Exhibit No. 527 for identification.

Mr. West: Copy of a letter dated May 20, 1935, from Gubernator to B. G. Brown,—one sheet.

Examiner Norwood: Exhibit No. 528 for identification.

Mr. West: Letter dated December 1, 1936, from Penn-Dixie to Mr. J. E. Tilford, consisting of three pages, attached to which are 26 pages of documents, including charts and other circular letters.

Examiner Norwood: Exhibit No. 529-A to DD, for identification.

2950 Mr. West: Copy of a letter dated November 23, 1936, from Penn-Dixie to Mr. E. S. Gubernator and others, attached to which are thirteen sheets, containing

charts, memoranda and other letters, making fourteen in all.

Examiner Norwood: Exhibit 530-A to N for identification.

Mr. West: Copy of a letter from Penn-Dixie to the Interstate Commerce Commission, under date of February 4, 1936, attached to which are two sheets, making three in all.

Examiner Norwood: Exhibit 531-A to C for identification.

Mr. West: Copy of a letter under date of December 4, 1935, from Penn-Dixie to Mr. G. H. Reiter, Chairman of the Trade Practice Committee, one sheet, attached to which are three additional sheets, making four in all.

Examiner Norwood: Exhibit No. 532-A to D for
2951 identification.

Mr. West: Three circular letters from the Cement Institute, dated April 2, 1935, March 22, 1935, and February 28, 1935. They are attached—three sheets in all.

Examiner Norwood: Exhibit No. 533-A, B and C for identification.

Mr. West: Copy of a letter under date of October 14, 1935, from Penn-Dixie to Reiter, Chairman of the Trade Practice Committee, attached to which are thirteen sheets embracing circular letters and carbon copies of other correspondence—fourteen in all.

Examiner Norwood: Exhibit 534-A to M, for identification.

Mr. West: The next is—

Mr. Wooden: May I suggest the possibility of a short recess at this time, Mr. Examiner.

2952 Examiner Norwood: I was figuring on that in just a minute. Are you through?

Mr. West: I have just this one document in this particular batch, but I have this other pile here (indicating).

2953 Mr. West: Copy of a letter from Penn-Dixie to Mr. G. H. Reiter, Chairman, Trade Practice Committee, dated August 14, 1935, attached to which are circular letters, carbon copies of other correspondence, consisting of six sheets, making seven in all.

Examiner Norwood: Exhibit No. 535-A to G for identification.

Mr. West: Seven schedules of information on the lowest

land grant rates on cement issued by the Cement Institute under dates of February 25, 1936, January 29, 1936, January 28th, 1936, January 28th, 1936, January 27th, 1936, January 26th, 1936, January 23, 1936; making 24 pages.

Examiner Norwood: That will be marked Exhibit 536-A to X for identification.

Mr. West: A letter dated November 2, 1935, from the Southern Railway System to Browder, Penn-Dixie.

Examiner Norwood: Exhibit No. 537 for identification.

2954 Mr. West: Copy of a letter dated October 16, 1936 from Penn-Dixie to Mr. G. H. Reiter, General Manager of the Cement Institute.

Mr. West: An original telegram from W. T. Turner to Browder, November 2, 1935.

Examiner Norwood: That will be marked No. 539 for identification.

Mr. West: The following circular letters from the Cement Institute relative to land grant rates, these circulars being dated respectively, each consisting of one sheet, January 28, 1937, January 16th, January 14th, 14, 13th, 12th, 12th, 12th, 12th, 11th, 11th, 8th, 7th, 7th, 7th, December 28, 1936, 28, 28, 28, 28, 22, 21, 19, 16, 4, 3, 1, November 28, 27, 25, 23, 21, 19, 18, 12, 11, 6, 3, 2, October 30, 29, 29, 28, 27, 27, 23, 23, 22, 20, 20, 19, 16, 14, 5, 5, 5, 5, 5, 3, September 30, 24, 24, 23, 22, 21, 14, 14, 11, 9, 8, 5, 4, 2, 2, August 28, 27, 24, 22, 22, 21, 21, 20, 19, 19, 17, 15, 14, 14, 12, 11, 11, 7, 7, 7, 4, 3, 3, 3, July 30, 30, 30, 28,
2955 24, 24, 22, 21, 21, 18, 13, 3, 2, June 29, 29, 22, 18, 17, 16, 13, 1, May 28, 27, 22, 22, 20, 18, 16, 13, 12, 11, April 27, 25, 24, 23, 23, 23, 23, 23, 23, 23, 20, 17, 16, 13, 7, 6, 6, 6, 4, 4, 3, 2, March 27, 27, 27, 27, 26, 26, 23, 18, 18, 16, 17, 7, February 28, 24, 21, 21, 19, 18, 18, 14, 14, 14, 13, 13, 12, 12, 11, 11, 11, 10, 10, 8, 7, 6, 6, 3, 3, January 29, 27, 23, 20, 20, 18, 17, 15, 11, 10, 9, 8, 3, 2, December 30, 1935, 30, and December 27, 1935, making 210 sheets in all.

Examiner Norwood: Those will be marked No. 540-A-1 to 540-A-210.

2956 Mr. West: Circular letter dated August 24, 1934, purporting to be signed by B. F. Affleck, attached to which is one sheet giving a biography of Frank Albert Fetter—two pages in all.

Examiner Norwood: Exhibit 541-A and B.

(Each document thus produced was marked for identification as indicated by the directions of "Examiner Norwood".)

Mr. West: Those are all of the documents which have been produced in response to the subpoena. They represent only documents which have been located in a preliminary investigation of but a few files of the corporation and we will continue to segregate and produce from time to time documents as they are located. I am tendering all of these documents to you for your inspection for the purpose of enabling you to determine their relevancy and materiality and I make my tender now.

2964 Mr. Heffernan: I am now appearing as counsel for the Green Bag Cement Company of Pennsylvania, and in behalf of the Green Bag Cement Company of Pennsylvania, and in response to the subpoena served upon the secretary of that company, that company now submits, in compliance with the subpoena, as modified by the understanding of counsel, the following materials:

Carbon copy of letter dated March 12, 1934, from Volunteer Portland Cement Co., Howell J. Davis, Vice President, to the Board of Director, the Cement Institute:

Letter dated March 5, 1934, from H. H. Lundborg, Secretary, the Cement Institute, to Mr. A. P. Meyer, Vice President, Green Bag Cement Co. of Pennsylvania. The last letter refers to a memorandum entitled "Plan for sharing available business," as enclosed and that is attached, that memorandum being in five pages with addenda, 21 pages in all.

2965 Examiner Norwood: That will be marked Exhibit 542-A to U, for identification.

(The papers referred to were thereupon marked, for identification, "Commission's Exhibit No. 542-A to U.")

Mr. Heffernan: In response to the subpoena the Green Bag Cement Company of Pennsylvania also submits carbon copy of letter dated March 5, 1934, from Albert P. Meyer to W. A. Wecker, President, Marquette Cement Manufacturing Company:

Letter dated March 2, 1934, from W. A. Wecker, President, to John F. Miller, President, Green Bag Cement Company of Pennsylvania:

Carbon copy of letter dated February 24, 1934, from

Price, Waterhouse & Co. to J. F. Woessner, Treasurer, Davidson Coke & Iron Company;

Carbon copy of letter dated February 23, 1934, from J. F. Woessner, Treasurer, to Price, Waterhouse & Company;

Mimeographed letter dated March 1, 1934, C. F. Conn, President, The Cement Institute to "Members of the Industry;"

Letter dated March 9, 1934, from W. A. Davis, Vice President, Standard Portland Cement Company to A. P. Meyer, Vice President, Green Bag Cement Company
2966 of Pennsylvania. The latter letter refers to a memorandum entitled "Plan for sharing available business," dated March 12, 1934. That memorandum is in five pages and is attached.

Letter dated March 9, 1934, from H. H. Lundborg, Secretary, "The Cement Institute," to A. P. Meyer, Vice President, Green Bag Cement Co., Pennsylvania;

Copy of telegram dated March 8, 1934, from A. P. Meyer, Green Bag Cement Company of Pennsylvania to G. W. Lundborg, Secretary, The Cement Institute. Letter dated March 7, 1934, from J. H. Wacker of the Standard Lime & Cement Company to Albert P. Meyer.

Letter dated March 17, 1934, from W. A. Davis, Vice President, Standard Portland Cement Company, to A. P. Meyer, Vice President, Green Bag Cement Company of Pennsylvania.

Letter dated March 7, 1934, from W. A. Davis, Vice President, Standard Portland Cement Company to A. P. Meyer, Vice President, Green Bag Cement Company of Pennsylvania.

Letter dated March 7, 1934, from W. A. Wacker, President, Marquette Cement Manufacturing Company to Alfred P. Meyer, Vice President, Green Bag Cement Company of Pennsylvania.

Carbon copy of letter dated March 3, 1934, from
2967 A. P. Meyer, Vice President, to A. E. Douglas, Allentown Portland Cement Company.

Carbon copy of letter dated March 3, 1934, from A. P Meyer, Vice President, to W. A. Davis, Vice President, Standard Portland Cement Company.

Memorandum entitled "Minutes of Meeting of The Cement Institute (Chicago Division), Blackstone Hotel,

March 1, 1934, 10 a. m." That memorandum is in two pages.

There are 20 pages in all.

Examiner Norwood: Those will be marked Commission's Exhibit for identification 543-A to P.

(The papers referred to were thereupon marked, for identification, "Commission's Exhibit 543-A to P.")

Mr. Heffernan: I should like to state, your Honor, that I have copies of all of the materials which I have just submitted, and I should like to submit for the Commission those copies and should like permission to substitute those copies for the originals just submitted whenever the Commission is satisfied that they are true copies.

Mr. Wooden: That is agreeable to counsel.

Mr. Heffernan: Those are all the materials which the Green Bag Cement Company of Pennsylvania has available up to this time, and other materials will be sub-
2968 mitted as available.

Mr. Jaques: If your Honor please, I am going to try if I can to shorten this matter just as much as possible. I appear on behalf of the Lehigh Portland Cement Company. There were three subpoenas served, one on the Secretary of the company as Secretary; one on Mr. Joseph S. Young, as President; and one on Mr. B. H. Rader, as Vice President. Pursuant to the understanding as to the time of submission of documents that has been arrived at here, the company has done the best it could, and we now offer in partial compliance, some papers.

Now, as I have been sitting here listening to this discussion, it seemed to me that we ought to have some basis of understanding on this, and maybe I can expedite it. Accordingly, following out that rule, here (indicating) is a folder on which marked on the back is "L. P. C. Co., February 4, 1938, 59 pp."

Now, this as I understand it all relates to the same subject-matter, and if these papers are relevant, I do not know just how many of the fourteen—I think there are fourteen heads in the subpoena—fourteen points or fourteen different divisions. So, your Honor, I proffer that, and I deliver it to your Honor in your judicial capacity, deliver it to your Honor alone, and if it is relevant,
2969 I request your Honor to determine if it is relevant.

The theory on which we are delivering it is of course

if is relevant, and not until your Honor has found out that it is relevant, which is the understanding that I would like to mention, that then as we see it, it is like prevails in a court. Now, I do not know all of the law on the Federal Trade Commission, but if your Honor finds it relevant, that can be submitted to opposing counsel, and not until then, so I hereby deliver the packet, if I can call it such, to your Honor. (Handing documents to the Examiner.)

Examiner Norwood: How many pages are there?

Mr. Jaques: One hundred fifty-nine excluding the back cover.

Examiner Norwood: They will be marked for identification Exhibit 544-A to 7 C's. I shall not rule upon its relevancy at this time, but it is delivered to me in compliance with these stipulations and the subpoenas duces tecum, and I have marked them for identification, and they will be submitted as those previously received, to the counsel on either side, first to the leading counsel for the Commission.

Mr. Jaques: Well, your Honor, I object to that. Of course, we have to state our theory of the law. I
2970 object to that as not warranted in law, but I request your Honor to reverse your ruling on that point.

Examiner Norwood: Well, you have your exception to that ruling.

Mr. Jaques: And as I understand it, my request for reversal of your Honor's ruling is denied?

Examiner Norwood: What is that?

Mr. Jaques: I have requested that your Honor reverse the ruling and you have denied by request?

Examiner Norwood: That is denied, yes.

Mr. Wooden: I understand that that is tendered as partial compliance, and further papers will be submitted later?

Mr. Jaques: I have stated the understanding, but I think this is the point that you are interested in, Mr. Wooden. There will be more material—I am sure of that—because the files are very voluminous.

Mr. Lejsure: Without taking unnecessary time, your Honor, I assume that the rulings that we have had, and the objections that were made this morning, we will be allowed

those in this last offer, the objections that were made this morning.

Examiner Norwood: Oh, yes, indeed.

Mr. Leisure: That applies also to the Green Bag Company who just submitted their papers to your Honor
2971 through the witness before the last.

Examiner Norwood: Yes. Now, off the record.

(Discussion off the record.)

Mr. Charles W. Sellers: On behalf of the Medussah Portland Cement Company and the witnesses John and Pickford, subject to the objections, conditions, and stipulations heretofore made by counsel in chief, we answer the subpoenas, by the presentation of two bundles of papers, one on behalf of the witness John, which is the larger, and the other on behalf of the witness Pickford, which is the smaller bundle. The Examiner should appreciate that according to the estimate of the Medussah Company, it would require weeks of search to comply literally with these subpoenas. That search is in progress, and the results of it will be furnished from week to week in accordance with the stipulation, the point of my remarks at this time being that we can not comply with the 20-day extension period, or rather, we can not comply within that extension period, there being millions of papers to examine.

I am ready to turn these over to the Examiner in accordance with the subpoena in such manner as he dictates (handing papers to the Examiner).

Examiner Norwood: Are these designated as to which witness submits them?

2972 Mr. Sellers: The larger bundle is submitted by Mr. John; the smaller by Mr. Pickford.

Examiner Norwood: Do you know how many sheets there are?

Mr. Sellers: I do not.

Examiner Norwood: The larger bundle just described, consisting of multigraphed matter and a printed volume here of the Capital Daily, and correspondence and copies thereof, may be marked for identification as Commission's Exhibit 545-A to blank.

(The documents referred to were thereupon marked, for identification, "Commission's Exhibit 545-A to blank.")

Examiner Norwood: The second and smaller package,

consisting of correspondence and copies will be marked for identification Exhibit 546-A to blank.

(The documents referred to were thereupon marked, for identification, "Commission's Exhibit 546-A to blank.")

Examiner Norwood: These are to be retained in my custody, to be inspected by counsel for both sides.

Mr. Sellers: We deliver them to the Examiner in response to the subpoenas under all of the conditions, objections and exceptions heretofore made by counsel in chief for the respondents, asking that the Examiner
2973 respect the rules of evidence and the rights, personal and constitutional, of this respondent.

Examiner Norwood: The Examiner will endeavor so to do. The counsel has the benefit of the former exceptions.

Mr. Sellers: Yes.

2974 Mr. Leisure: If your Honor please, we have certain papers that have been sent to us here under a subpoena and the stipulation that was entered into which we would like to offer at this time. The first one I have in my hand is that of the Hermitage Company. Two subpoenas were served in the case of the Hermitage Company, one on the Secretary and one on the President and I tender the material to your Honor.

Examiner Norwood: Can you give a general description of the material?

Mr. Leisure: I have not looked at it.

Mr. Wooden: Do these (indicating) represent a partial compliance on behalf of the Munday and Hermitage?

Mr. Leisure: Yes, it is my understanding this is under the stipulation.

Examiner Norwood: The pile of papers presented by counsel in response to the subpoena duces tecum, consists of letters, copies of correspondence, telegrams, and multigraphed matter. It may be marked Commission's Exhibit 547-A to blank, for identification.

Mr. Leisure: In the interest of saving time, your Honor, I am offering papers here from several different companies. I will make one objection that will cover
2975 them all in the end, if that is satisfactory to your Honor.

Mr. Wooden: I think each company should be kept separate.

Mr. Leisure: Instead of stating my objection each time when I finish putting in the papers, I will state one which will cover all of the companies, if that is satisfactory.

The next folder I have, your Honor, is that of the Giant Portland Cement Company, on which company two separate subpoenas were served, one on the President and one on the secretary. I am tendering those to your Honor.

Mr. Wooden: Is this partial compliance?

Mr. Leisure: In partial compliance under the stipulation.

Examiner Norwood: The file of papers described and submitted by counsel, consisting of letters and copies of correspondence and multigraphed letters and price data may be marked Commission's Exhibit 548-A to blank for identification.

Mr. Leisure: I am also tendering to your Honor the papers of the West Penn Cement Company. In that
2976 instance, one subpoena was served. This is also in partial compliance, Mr. Wooden, under the stipulation.

Examiner Norwood: The papers presented by counsel consisting of correspondence, copies of multigraphed matter, etcetera, are marked Commission's Exhibit 549-A to blank, for identification.

Mr. Leisure: I am now tendering to your Honor the papers I have received from the North American Cement Company. In that case one subpoena was served. This too, is a partial compliance under the stipulation.

Examiner Norwood: This file will be marked Commission's Exhibit 550-A to blank for identification.

Mr. Leisure: I would like also to tender to your Honor the papers we have received from the Nazareth Cement Company. One subpoena was also served in that instance.

Examiner Norwood: Are you retaining these subpoenas.

Mr. Leisure: I did not know I had handed you any subpoenas. I think we are supposed to have these subpoenas.

Examiner Norwood: The papers presented are
2977 marked Commission's Exhibit 551-A to blank for identification.

Mr. Leisure: I also tender the papers your Honor, of the Kosmos Portland Cement Company. In that case one subpoena was served.

Examiner Norwood: The file presented by counsel, con-

sisting of 36 sheets will be marked Commission's Exhibit 552-A to JJ for identification.

(Each document thus produced was marked for identification as indicated by the directions of "Examiner Norwood.")

2984 Mr. Hershberger: I have received today through the mail a package of papers which I hold in my hand here, and the pages are numbered 1 to 169, inclusive. They are photostats. I don't know how it happened that photostats were sent instead of the originals and carbons. It may have been a mistake, or it may have been a misconception on the part of the person that sent them, but I would like to proffer these and be willing to get the others
2985 for checking purposes if you think it should be done.

Mr. Wooden: (Interrupting) No, we have no objection to photostats.

Mr. Hershberger: In other words, if it keeps on coming in in that manner it will be all right?

Mr. Wooden: Yes. And you do not care about the return of the photostats, because you have the originals?

Mr. Hershberger: I will make a statement in that connection in just a minute.

I want to state that these papers are being supplied not voluntarily, but only pursuant to three certain subpoenas, one of which was directed to Mr. Smith, the President of the Universal Atlas Cement Company, one of which was directed to Mr. Stone, a Vice President of the Universal Atlas Cement Company, and another one of which was directed to "Secretary," without designating the name of any individual, of the Universal Atlas Cement Company.

I understand that these papers have been secured
2986 from certain files in compliance with one or all of those three subpoenas, as a partial compliance and we will furnish as fast as we can further papers.

I only want to say, I think, in addition to what I have said, that we conceive the proper practice to be on our proffer of these documents, that the Trial Examiner should himself determine their relevancy and materiality before exhibiting them to counsel for the Commission. I take it that the Trial Examiner disagrees with me in that respect, and I want to preserve our objection to the procedure which he indicated with respect to the papers presented by other companies, and to make it clear that we want to

preserve all of our rights, statutory and constitutional, whatever they may be, with respect to these papers.

I think there is nothing I need add at this time.

Examiner Norwood: Counsel has his exception. They are marked for identification No. 553-A to seven M's.

(The papers referred to were thereupon marked, for identification, "Commission's Exhibit No. 553-A to MMMMMMM.")

Mr. Hershberger: I hand those to you, Mr. Trial Examiner (handing papers to the Trial Examiner.)

Mr. Wooden: Your Honor, I have here two letters
2987 from Professors Clark and Burns, who were the recipients of subpoenas addressed, I believe, one to you and the other to the Secretary of the Commission, stating why they could not produce the papers called for, I think in view of the fact that today is the day on which they should have produced the papers, that the letters explaining their inability to do so should be in the record, and I ask that they be given the two numbers that next follow.

Examiner Norwood: Is there any objection to their being received in evidence?

(Discussion off the record.)

Mr. Wooden: Your Honor, I won't offer them at this time, but I will just let them be marked for identification.

Examiner Norwood: They will be marked respectively 554 for identification and 555 for identification.

(The letters referred to were thereupon marked, for identification, "Commission's Exhibits Nos. 554 and 555," respectively.)

Mr. Wooden: Are there any further reports regarding compliance with subpoenas today?

Mr. McFadden: We have some information indirectly
2988 about some of the other companies. I want to say first that as to any subpoenas served upon the West Coast companies, we do not now represent those West Coast companies, and it was my understanding there was some special extension granted to them. As to the other companies whose officers have received subpoenas, it is my information that some material is in the mail under this date, so that they would be in compliance. I have no direct knowledge of that, but that will probably turn out to be the fact.

2989 Washington, D. C.,
Tuesday, February 8, 1938.

2990 Mr. Wooden: Your H or, when we recessed on Friday, we were at the point of asking about the papers that were subpoenaed from Professors Clark and Burns. Mr. Leisure said he would take it under advisement and let us know, as I understand, this morning.

Mr. Leisure: Your Honor, as to those papers, I have had the opportunity, over the week-end, to discuss that with my associate counsel and as to those papers, we do not feel that we have any right to turn those over to the Commission because they are privileged and we would like—if I may, I would like Mr. Wooden to hear this because I am saying this for his benefit—but if it is legal and proper that the Commission should have the Burns and Clark papers, then, of course, we want them to have them and for that reason we would like to arrange a time that is convenient to Mr. Wooden when we can take this before the Commission and have the Commission determine whether or not the subpoenas which are out, or whether any subpoenas, for that matter—whether these are papers
2991 that are subject to a subpoena.

We feel that these are confidential papers which are in the nature of a trial brief, that are being subpoenaed by the Commission to be turned over to them. They are papers that were prepared at our direction and for our use, and since all these subpoenas that are out are going to raise this question, we feel this should be ruled on properly by the Commission and we do not want to take the responsibility until the Commission has ruled.

I may say that they have been in our hands for many months. I do not say that they all have, but many of them have, or at least the ones covered by the letter of Mr. Clark and Mr. Burns, and we want a ruling from the Commission on that.

I do not know that it is necessary to interrupt the hearings to get that. Any time that is convenient to Mr. Wooden will satisfy us. I believe the Commission ordinarily sits for motions on Mondays and if Mr. Wooden would care to arrange to take up that matter on Monday, that will be agreeable to us, or any other time that is agreeable to him.

Mr. Wooden: Just a moment, Mr. Leisure.

(Discussion off the record.)

2992 Mr. Wooden: Mr. Leisure, I assume that your statement contemplates that you do not care to consider turning the papers back to Clark and Burns in order that they might themselves comply with the subpoena?

Mr. Leisure: I had not considered that at all, because the reports are not proper evidence, and I do not think it would be proper to turn them back. There is no occasion for doing that.

2994 Mr. Wooden: Will you meanwhile retain custody of the papers which Clark and Burns turned over?

Mr. Leisure: I assure you, Mr. Wooden, that now or at no other time will we indulge in any sharp practice, if that answers your question.

Mr. Wooden: There is no doubt of that.

Examiner Norwood: He meant, will you keep them here where they are available?

Mr. Leisure: We have no intention of doing anything with the papers except complying to the full extent with the law, and we want to get a ruling from the Commission upon what they think we should do.

Mr. Wooden: Do you contemplate—it may be possibly implied in what you said—in complying with the 2995 subpoenas issued to other parties, that material that relates to Clark and Burns, for instance, will not be produced until the whole question is settled?

Mr. Leisure: Well, as I have explained to the Examiner, I thought pretty clearly, they are asking us whether or not they should turn matter over, and we are unwilling to take the responsibility of that until we have had a ruling from the Commission.

Mr. Wooden: The return date of the Clark and Burns subpoena has already passed. That was Friday.

2996 Mr. Leisure: Well, I think the record is clear that they wrote a letter that they did not have the material and, of course, they could not reply to the subpoena, but it is not alone the Burns and Clark subpoenas: there are many subpoenas out that raise this question and so we want to have a ruling on it from the Commission.

2998 GEORGE H. REITER was thereupon recalled as a witness for the Commission and, having been previously duly sworn, testified further as
2999 follows:

Direct Examination (Continued) by Mr. Wooden.

Q. Mr. Reiter, was the South Dakota State Plant a member of the Institute at any time?

A. It was not.

Q. Was it included in the Code Authority setup?

A. Yes, that is right—as a member of the industry.

Q. Was the former State Plant in Michigan at any time a member of the Institute?

A. No, I do not think it was in operation at any time that the Cement Institute was running, but it was not a member, at least.

Q. Were those plants eligible for membership?

A. You are talking now about membership in the Cement Institute?

Q. Yes.

A. Judging by the fact that—I do not know as I can answer that, Mr. Wooden.

Q. Were they ever solicited for membership, as far as you know?

A. No.

Q. Did they ever apply for membership?

A. Verbally the management of the South Dakota State Plant talked about becoming a member or applying
3000 for membership in the Cement Institute, but he never applied in writing for membership.

Q. You say they merely discussed it without making application?

A. That is right.

3001 Mr. Leisure: Mr. Wooden, on this exhibit which you are now offering, Exhibit 138, this was obtained apparently, your Honor, in May, 1931, by the Commission, and I would like to observe that there were changes made from time to time on the document prior to that date. I assume there may have been changes after that date. With the understanding that we will be able to offer any such changes in the future, I have no objection to the document being received in evidence.

Mr. Wooden: We have a December, 1935, issue or edition of the same document, and we will put that in later.

(COM. EX. 138-A to T was offered and received in evidence.)

By Mr. Wooden:

Q. Mr. Reiter, I note among the declaration of purposes, the following: "To adopt and promulgate a Code of Ethics for the government of the members." Was a Code of Ethics adopted and promulgated?

A. Yes,—well, it was adopted.

Q. And distributed, at least, whether promulgated is the proper word or not?

A. Yes.

3002 Q. Another declaration is, "To establish and maintain all such lawful trade customs and usages for the protection of the members as the Institute may deem advisable." What were the trade customs and usages that this Declaration of Purposes applied to?

A. I am afraid I cannot answer that, Mr. Wooden.

Q. Do you know any of the trade customs and usages which the Institute sought to establish and maintain?

A. I do not know to what that refers.

Q. Of course, it is quite broad, because it says, "all such lawful trade customs and usages as the Institute may deem advisable." Can you say whether or not the Institute did deem advisable to establish and maintain any trade customs and usages?

A. Not to my knowledge.

Q. What about the Code of Ethics? Would that cover some of the trade customs and usages that the Institute deemed advisable to establish and maintain?

A. I do not believe that I can answer that.

Mr. Leisure: If your Honor please, the Code of Ethics is now in evidence and the document speaks for itself.

Mr. Wooden: No, it is not. This is the Articles of Association.

Mr. Leisure: I thought you offered it.

3003 Mr. Wooden: Not the code of ethics.

Examiner Norwood: If it were, he could tell what he understands from it.

Mr. Leisure: That was not the question, your Honor. He did not ask him what he understood; he asked him what the document provided, and that is the point of my objection.

Examiner Norwood: He asked him what he considered.

Mr. Wooden: I asked him the relation of the Code of Ethics to the trade customs and usages that the Articles of Association referred to.

Mr. Leisure: That is a new question, but I object to that question as calling for a legal conclusion which this witness is not competent or prepared to answer.

Examiner Norwood: He has already said he could not answer it.

Mr. Wooden: The witness is competent by reason of his experience and connection with the Institute affairs, I should say.

Mr. Leisure: I think that is a legal conclusion.

Mr. Wooden: I do not see anything legal about it.

Mr. Wooden: Your Honor, I have here a paper identified by Mr. Milwee as exhibit for identification 138-1-A
3004 the Institute Code of Ethics, and I now offer it for the record.

Mr. Zimmerman: Of what date would that be?

Mr. Wooden: It was obtained by Mr. Milwee in 1931. Whether it bears a date upon its face or not, I do not know.

Mr. Zimmerman: I am going to object to this; I should have objected to the other. It is so remote, so absolutely unrelated to any of the causes of complaint here. A good many of the respondents have no connection with the Institute at all until long after this period. Subsequent to this, the Code of Ethics so-called or the N. R. A. Code which came into being, was adopted. A long time subsequent to this, there were changes and amendments and discarding of various codes, and that sort of thing. I think that we ought to get down to something that has to do with the causes of complaint rather than encumbering the record with this stuff.

Examiner Norwood: Is there any further objection?

Mr. Wooden: Your Honor, one of the basic and I might say one of the basic set-ups of the Institute is its Code of Ethics, and the fact that an N. R. A. Code followed it, and a compendium followed that— I think that while there may have been changes that followed that from
3005 time to time, I think that you will find a high degree of continuity running through all the documents.

3006 Examiner Norwood: The papers heretofore marked 138-1 to 8, inclusive, are received in evidence—

Mr. Leisure: Your Honor, may I just be heard a moment before you rule?

Examiner Norwood: I asked for further objections and there was no reply.

Mr. Leisure: I could not interrupt counsel while he was talking.

Examiner Norwood: All right, proceed.

Mr. Leisure: May I ask the witness a question on voir dire, Your Honor?

Examiner Norwood: Certainly.

By Mr. Leisure:

Q. I show you Commission's Exhibit 138 for identification, Mr. Reiter, and ask you whether or not you recognize that to be the code of ethics used when you were connected with the Institute or whether there was any more recent document used?

A. So far as I know, Mr. Leisure, this code of ethics was written in 1929 and there was no revision of this code of ethics.

Q. And this is the code of ethics that was used up until April, when you left, as far as you know?

A. Until January 1, 1931.

Q. Oh.

3007. A. I think it is incorrect to say that it was the code of ethics in use, because so far as I am concerned, I did not use it, nor did I have any duties charged to me in respect of this code. Otherwise your statement is correct.

Q. Will you just explain the document, then, so His Honor will be clear on it?

A. When I was manager of the Chicago division of the Cement Institute from February 1, 1930, until December 31 of the same year, this code of ethics had already been prepared and I was furnished with a single copy of this code and I had it in my file. I have read it but that is all I know about it.

Mr. Leisure: Your Honor, on the witness' statement, subject to our having the right to put in any changes which may have been made subsequent to 1931, I make no objection to the document.

Examiner Norwood: I think you should be permitted to show any subsequent changes in the papers. The papers heretofore marked 138-1-8, inclusive, are received as Commission's Exhibit 138-M to T.

(COM. EX. 138-M to T was offered and received in evidence.)

By Mr. Wooden:

Q. Mr. Reiter, do you recall whether or not the
3008 code of ethics was signed by the various members?

A. I believe it was.

Q. I think it so provides in the body of the code;

A. I think that is right.

Q. On page 1 it refers to the undersigned manufacturers compiling the code and then it is stated "hereby agree to be bound thereby."

Q. Now, Mr. Reiter, I call your attention to para-
3009 graph No. 14 on page 5 of the code of ethics, Exhibit 138-M to T, inclusive, relating to diversions.

A. Yes.

Q. According to that paragraph, it was declared to be unfair and discriminatory to divert or to permit diversions of carload shipments made to one destination to another destination in cases where the result was to enable the purchasers or users to secure cement at less than the manufacturer's market price at the point of final delivery. Would you say that was in recognition of a custom or usage of the trade to sell cement on a delivered price basis?

A. I believe that the custom of the industry in many cases was to sell at a delivered destination price at the time that was written, as I believe it is now.

Q. My question, however, was whether you considered that in recognition of that custom or usage—Paragraph 14.

A. I think that is the practice.

Mr. Leisure: I think the whole paragraph should be read because the paragraph explains it very well.

Examiner Norwood: The Commission has never been averse to reading those things.

Mr. Leisure: I ask that it be read at this time.

Mr. Wooden: Paragraph 14 is—there is an introduction to all these paragraphs that will have to be brought in. It
is under the head of "Secret rebates and price con-
3010 cessions," and follows a general declaration against rebates and refunds and then it says:

"In order to carry out the principle stated above, the following specific matters, in addition to the above statement, shall be regarded as secret rebates and price concessions."

Then, there are thirteen paragraphs before Paragraph 14, which reads:

"For manufacturers to divert, or to permit purchasers or users of cement to divert, carload shipments of cement, made to one destination, to other destinations in cases where the result of such diversion is to enable purchasers or users of cement to secure cement less than the manufacturer's market price at the point of final delivery, is discriminatory as between purchasers or users, and is therefore an unfair trade practice."

3011 Mr. Wooden: I am informed by the man who is numbering these papers that Exhibit 138-A to L should have been A to M, and that therefore this exhibit 138-M should begin with N.

Examiner Norwood: Exhibit 138 is received as A to M, and the last documents received will be marked Commission's Exhibit N to U.

(COM. EX. 138-A to U was offered and received in evidence.)

Mr. Wooden: Your Honor, I have in my hand a paper marked for identification Commission's Exhibit 153-K to Z inclusive, being papers which were identified by Mr. Milwee, I believe, as having been furnished him by the New York office of the Institute in 1931. They consist of a circular letter to the trustees, by Mr. McConnell, dated July 14, 1930, and a memorandum to the members of the same date transmitting a report on the standard form of the sales contract. I offer them for the record.

3016 Mr. Leisure: Your Honor, with respect to Exhibit 153 for identification, as I understand it counsel for the Commission has offered it. May I ask the witness a question about it?

Examiner Norwood: Certainly.

By Mr. Leisure:

Q. Mr. Reiter, I show you Exhibit 153-K to Z. The first page starts off with the statement that it is a memorandum of a draft. Can you tell me whether or not there was any subsequent paper of that draft or whether or not this proposal was ever sent out to the members of the Institute in any way?

A. Mr. Leisure, judging from this first page, to my knowledge I have not seen this letter before and know nothing about it except what I can read from the letter.

Q. Will you just read it and see if it refreshes your recollection about it?

A. (After examining exhibit:) I am sure that I have never seen this letter before or this attached memorandum.

3017 Q. Mr. Reiter, as to the next page—L—being a letter dated July 14, 1930, and marked for identification "153-L, M, N, O, P and Q", I show you that letter, Mr. Reiter, and ask you if you have ever seen it before?

Examiner Norwood: Do you wish the question read, Mr. Witness? Read the question to the witness.

(The reporter read the question.)

The Witness: I have no recollection of these papers.

3018 By Mr. Leisure:

Q. As to Exhibit 153-R, Mr. Reiter, did you see that letter at the time it was written, or are you familiar with it?

A. I have never seen this letter before and I am not familiar with it.

3019 Q. Mr. Reiter: I show you a letter dated June 12, 1930, also contained in this Exhibit, marked 153-S, and ask you if you are familiar with that letter, or if you ever saw it?

Mr. Wooden: Again I say that the identification of these papers does not depend on the testimony of this witness.

The Witness: I have no knowledge of this letter.

3020 Q. I now show you, Mr. Reiter, parts of the same exhibit, 153 designated T, U, V, W, X, Y, and Z, and ask you if you have seen those papers before, either in your official capacity or at any other time?

A. I have not seen these papers.

3028 (COM. EX. 153-K to Z was offered and received in evidence.)

By Mr. Wooden:

Q. Mr. Reiter, I notice that the Institute recommended to the members that the contract should contain this provision among others: "Paragraph 2, price and quantity: A definite agreement to sell and buy a specific number of barrels of Portland cement at definite price or prices f.o.b. a specific destination or destinations subject to terms and conditions as outlined." Would you say that that was in

recognition of the custom or usage of the trade to sell at delivered prices?

The Witness: I believe that that is true, that it is the practice to sell at destination.

3029 Q. I show you, Mr. Reiter, a printed pamphlet marked Exhibit 556 for identification. Will you state what it is? (Handing paper to witness.)

A. (Witness examining paper.) This is a government printing of proposed code of fair competition for the Cement Institute.

Mr. Zimmerman: What is the date?

The Witness: It has no date except as to the printing, 1933. I was looking for the adoption. (Examining paper.) There is a copy of a letter in the back of this pamphlet from Charles F. Conn to General Hugh S. Johnson dated June 19, 1933.

By Mr. Wooden:

Q. I believe you said it was identified on the face as a proposed code for the Cement Industry?

A. That is right.

Q. Mr. Conn submitted his letter as president of the Cement Institute, did he not?

A. That is right.

Q. You became affiliated with the Institute on

3030 what date? Was it August 1, 1933?

A. That is right.

Q. The facing sheet also contains the statement about this representing merely the proposal of the—is it The Cement Institute?

A. May I read it?

Q. Yes.

A. (Reading) "The code of the Cement Institute in its present form merely reflects the proposal of the above-mentioned Institute, and none of the provisions contained therein are to be regarded as having received the approval of the National Recovery Administration as applying to this industry."

Mr. Wooden: I offer the document for the record.

Mr. Leisure: Your Honor, as to Exhibit 556 for identification, it appears to be a government printing and states in the front page, "Proposal." I want to object to it on that ground, and also for the further grounds I will state. It is incompetent, immaterial and irrelevant, being a pro-

posal made by the different members, it was a privileged communication to the Code Authority, and until some proper basis is laid for its offer in evidence in this case, we object to it.

Mr. Wooden: It was submitted by the Institute through its president, your Honor, as indicated by the letter that is printed therein.

3031 Examiner Norwood: And for the same purpose as these other papers?

Mr. Wooden: This contains many other provisions other than regarding the uniform sales contract which the last papers related to.

Examiner Norwood: It is offered as showing the objectives of the respondent, Cement Institute, is it not?

Mr. Wooden: Objectives and recital of some conditions and practices and customs in the industry.

(COM. EX. 566 was offered and received in evidence.)

Q. Now, as I understand it, Mr. Reiter, this is not a copy of the code that was actually adopted and put into effect? There was a later revision which became the accepted code, so to speak?

Apparently so. I am familiar with the adopted code.

3032 By Mr. Wooden:

Q. I call your Attention to Article 9, Section 1-a, in this proposed code, which reads:

"Except in cases where the Committee permits otherwise, all cement quotations and sales shall be f.o.b. point of delivery and all cement shall be sold on such delivered basis; provided, however, that in making quotations and sales to the Federal Government, cement shall be sold f.o.b. plant, in the event land-grant rates may be availed of by the Federal Government in arriving at the delivered cost."

Do you know whether or not that particular provision in that form went out of the code at the time it was actually adopted?

A. It was not included in the official code.

Q. Do you know what reasons led to its omission in the code as actually adopted?

A. No, I do not. As I said, I was not in these preliminary conferences. I am sorry I cannot be more specific.

Q. I direct your attention particularly to the last part of that paragraph reading:

"provided, however, that in making quotations and sales to the Federal Government, cement shall be sold f.o.b. plant, in the event land grant rates may be availed of by the Federal Government in arriving at the delivered cost."

Can you say whether or not that provision was in-
3033 cluded in the code as adopted?

A. It was not.

Q. Do you know anything as to the reasons that provision was omitted from the code as adopted?

A. I do not.

Q. Were you aware that there was any sentiment in the industry on the part of some members of the industry to the effect that the Government should be sold f.o.b. plant?

Examiner Norwood: Objection sustained as to the form of the question. You can bring that out if this witness knows about the facts.

By Mr. Wooden:

Q. Did you know any members of the industry who favored that provision that the Government should be sold f.o.b. plant?

3034 A. I knew of it at a later date; namely, after the code was in effect.

Q. I notice in the preliminary statement of this exhibit that it appears that the "Cement Institute, the applicant herein, presents this proposed code of fair competition, setting broad ethical principles of fair competition, and in the supplement thereto, which is a part thereof, essential details of fair trade practices, which together represent the best thought and experience of the entire industry" et cetera.

If that provision, which I directed your attention to, represented the best thought and practice and experience of the entire industry, can you offer any explanation as to why it went out in the code as adopted?

A. I do not know, Mr. Wooden.

Mr. Zimmerman: Maybe the code administrator objected to it.

Mr. Wooden: Maybe, but I can not conceive of the code administrator objecting to the Government receiving bids f.o.b. plant.

Mr. Zimmerman: They did lots of funny things.

Mr. Wooden: That would be about the funniest of all.

By Mr. Wooden:

Q. I now show you a printed pamphlet marked 3035 557, for identification, and purporting to be a copy of the code of fair competition as approved by the President on February 3, 1933. Will you accept that as an authentic reproduction of the code?

A. Yes, sir; I am familiar with this copy.

Mr. Wooden: I offer that for the record.

Mr. Leisure: No objection.

Examiner Norwood: Received as marked.

(COM. EX 557 was offered and received in evidence.)

Q. I call your attention, Mr. Reiter, to a provision in the code under Article 10, Section 3, under the heading of "Unfair competition", reading:

"To divert or permit purchasers or users of cement to divert shipments of cement from one destination to another destination, the result of which will enable the purchaser or user to secure cement at less than the member of the industry's published market price at the point of final destination."

Will you say whether or not that was the identical provision that was in the code of ethics?

Mr. Leisure: Is there not a general paragraph that precedes and qualifies that?

3036 Mr. Wooden: There is an introductory paragraph which reads:

"For the purposes of this code, the following acts shall constitute unfair trade practices and a violation of this code:"

What I read was No. 3 under that.

By Mr. Wooden:

Q. Would you say that that provision was in recognition of the custom and usage of selling at delivered prices?

A. I think so.

Q. And was it your experience that if diversion of the sort referred to were permitted, that it would result and sometimes did result in allowing the purchaser to obtain his cement at less than the mill's destination price?

Mr. Leisure: If Your Honor please, I object to this question. This calls for a conclusion of this witness, which I think is not entirely material and relevant to the

issues in this case. If that is material and relevant, there is a proper way to prove it.

Examiner Norwood: Read the question.

(The reporter read the question.)

Examiner Norwood: If you can state that from your own knowledge and based on your own experience, you may do so. Objection overruled.

The Witness: My knowledge at this time was con-
3037 fined to the prices filed with the code authority and the fact that I believe complaints were charged under the code to—that diversions in transit caused this very thing prohibited by the code.

By Mr. Wooden:

Q. Even prior to this N. R. A. code, as a member of the industry, and from the experience you had in the industry, was your experience of the same sort you have just referred to?

A. Yes.

Q. I notice in this code, Exhibit 557, under Article 10, Section 4:

"The following practices, undertaken for the purpose or with the effect, directly or indirectly, of furthering the sale or use of a particular brand of cement, constitute unfair trade practices and a violation of this code:"

And then, under (g), it reads:

"Knowingly to ship cement by any transportation agency which, for the purpose or with the effect of inducing or influencing the sale or purchase of cement, makes payments or concessions by rebates or otherwise."

What were the transportation agencies that fell within the purview of any such provision as that?

A. Any transportation agency which did not have its tariff rates responsibly on file with the State or Inter-
state Commerce Commission.

3038 Q. Does that provision apply to shipment by trucks?

A. It applied to shipment by trucks, and to shipment by water where rebates were made.

Q. Or where the rates were not filed with some public agency?

A. I think that the statement says that it is an unfair trade practice—

Q. (Interposing.) Here it is, "G."

A. Well, it is shipment by any transportation agency, as stated here, which does in fact make rebates.

Q. Or otherwise? Payments or concessions or otherwise, and you have already said about trucks coming within that?

3039 The Witness: If I was correctly quoted by Mr. Zimmerman, I stated the wrong thing. I did not intend to say that all trucks gave rebates.

By Mr. Wooden:

Q. I did not understand you to say that.

A. And if I made that statement, I want to correct it. I say what I meant to indicate, Mr. Wooden, is this, that the railroads and certain water transportation lines having tariffs on file which are adhered to, were not in a position, in my opinion, to make rebates of transportation.

Examiner Norwood: And that some trucks did make the rebates?

Mr. Wooden: It is a misnomer, I should say, to 3040 use the word "rebates" in such a situation.

Examiner Norwood: Is that right?

The Witness: Based on the information I received during the code period, I understand they did.

By Mr. Wooden:

Q. Was not the basic difficulty with which you were seeking to deal and the conditions which you were seeking to remedy, to prevent the use of transportation agencies whose charge for delivery could not be ascertained generally in advance?

Mr. Leisure: The question presupposes that this witness had something to do with making this code, and I believe he has already testified that he had nothing to do with those negotiations, and I object to that question from this witness.

Mr. Wooden: It is not confined to the provisions of the code as such, but the provisions in the industry.

Examiner Norwood: Read the question.

(The question is repeated.)

Examiner Norwood: Objection overruled. He can answer that now as referring to your own objectives and activities there.

The Witness: The answer to that is no, Mr. Wooden. I will be glad to explain further if you care to have me, that my objectives in administering this code were to at-

tempt to see that the members observed their own
3041 filed prices which they were required by the code to do.

By Mr. Wooden:

Q. And they were destination prices?

A. Not in all cases.

Q. But generally?

A. Generally, yes.

Examiner Norwood: And you found that that could be done better when they used these regular means of transportation than when they used the trucks, is that true?

The Witness: This, to my mind, your Honor, is not a question of influencing the price, but looks to rebates which defeat the price filed with the Code Authority, which the members were required to observe.

By Mr. Wooden:

Q. But you interpreted it as applying to truck transportation in general, did you not?

A. No, I would not say so, Mr. Wooden.

Q. Do you mean to say that you interpreted it as applying only to the trucks who did give rebates and not to the trucks who did not give rebates?

A. Exactly.

Q. Now, what does it mean by "trucks giving rebates" if they were not putting their rates on file with some public agency?

A. It means in case the cement manufacturer hired
3042 these trucks, that they would agree to transport this cement at say 40 cents a barrel. That would make that agreement with the cement manufacturer, and the cement manufacturer would pay them 40 cents a barrel, and then they would give 20 cents to the customer, and therefore the customer received at destination his cement at 20 cents less than the manufacturer's file price or market price.

Q. And supposing no rebate was given and the 40-cent truck rate applied, whereas the railrate say was 60 cents, then what was the application of the provision?

A. There was no application—that is, there was no violation under this provision as I see it.

Q. That question, however, did enter into many discussions, did it not, as to the effect of truck rates upon the delivered price even though rebates were not given by the trucks, is that right?

3043 The Witness: I do not know as I can definitely answer that question, Mr. Wooden. We had many prices filed with us for delivery by truck or conditions of truck delivery associated with the prices, and I do not recollect any discussions regarding them except probably with the person who filed them.

By Mr. Wooden:

Q. Will you say whether or not the trucking question was a very acute one, regardless of the question of rebates, simply because the truck transportation cost was less than the rail cost?

Mr. Leisure: Just one moment, please. I object to that question as being incompetent, immaterial and irrelevant, and on the further ground that it calls for a conclusion of the witness. Whether or not the trucking situation was acute or not, is not material.

Examiner Norwood: Objection overruled.

The Witness: I believe the trucking situation was acute in that it brought certain complications into the cement industry, but not as you indicate, Mr. Wooden, because it was a lower cost of delivery than by rail.

By Mr. Wooden:

Q. Did it not produce uncertainty as to the delivered prices?

A. It generally added new conditions of delivery.

3044 Q. Conditions which could not be ascertained by competitors of the mill that was using the trucks?

A. Well, they could be ascertained if they were filed.

Q. In most instances, the truck rates were not filed, were they?

A. Oh, yes, only in some instances where they were used, unless they were in violation of the code.

Q. Where were they filed?

A. You mean the rates?

Q. The truck rates.

A. I beg your pardon. No, the truck rates at that time were not on file with any commission.

Q. Is that what you mean by the complications resulting?

A. No. I mean that truck delivery, for example, was in less quantity than railroad delivery, that it delivered at different destinations than the railroad delivered, and such complications made it difficult for a competitor to meet with

rail delivery the prices and terms as filed by another with truck delivery.

Q. You say it made it difficult for the rail shipper to meet the truck shipper?

A. That is right.

Examiner Norwood: Did it make it difficult for him to determine accurately the costs?

Mr. Zimmerman: I do not see why it would if they
3045 filed the prices and specified that they were making delivery by truck.

Examiner Norwood: Let him answer.

The Witness: The costs at which the manufacturer sold whether by truck or by rail, were filed and could be determined.

Examiner Norwood: I mean the delivered cost.

The Witness: That is what I mean.

By Mr. Wooden:

Q. Filed with the Code Authority?

A. Filed with the Code Authority. But these rebates defeated that filing.

Q. What does the language "or otherwise" mean following the word "rebates" in the provision?

A. While I have nothing specific in mind, it means any concession which might be given other than in money.

Q. We will come back to that subject later.

Mr. Wooden: I ask to have these papers marked Commission's Exhibit 558-A, B, and C for identification.

(The documents referred to were marked "Commission's Exhibit 558-A, B, and C for identification.")

By Mr. Wooden:

Q. Are you aware, Mr. Reiter, of any sections where the cement mills serving particular sections went on record against the use of trucks as a method of delivering
3046 cement and in favor of rail delivery exclusively?

3047 Examiner Norwood: Let counsel ask another question. The other reporter has the question and we can not have it read.

Mr. Wooden: I will pass it by. We will have a
3048 lot more to say about trucking before we get through.

By Mr. Wooden:

Q. I am showing you, Mr. Reiter, papers marked for identification 558-A, B and C, purporting to be photostats of correspondence passing between you and, I think, the National Cement Company. Will you state whether you

will accept those as authentic copies of the documents and being what they purport to be?

A. I am familiar with the reply and it refers to this original letter and so I accept them as being authentic.

3049 COM. EX. 558-A to C was offered and received in evidence.)

3050 Q. If I am not mistaken, Mr. Reiter, you prepared the letter marked 558-C for the signature of the chairman of the code authority in reply to the letter which is 558-A and B?

A. That is right.

Q. Now, in the letter to Mr. Rader, chairman, to which you prepared the reply, the statement is made concerning a long distance conversation between the writer of the letter and the secretary of the code authority. I take it that that means you?

A. I was secretary of the code authority.

Q. Your answer is here but I want to call attention to that part Mr. Nicholson writes:

"In a long distance conversation between the writer in Birmingham and the secretary of the code authority in Chicago on March 31, 1934, the writer was advised 3051 that the code authority did not desire f. o. b. mill prices filed on government lettings. In a long distance conversation of April 18, 1934, with the member of the code authority of this district, the writer advised him of the understanding he had received in the long distance conversation with the secretary of the code authority on March 31, 1934."

In reply, as shown by Exhibit 558-C, you stated, or had the chairman state:

"Mr. Reiter does not clearly remember his telephone conversation with you on March 31, 1934, but states that upon inquiry he had advised members of this industry that it is unnecessary to file prices f. o. b. mill in addition to government destination cost, and prices f. o. b. mill should not be bid unless properly filed with the code authority."

Then you go on, in the chairman's letter, which you prepared, to give the form of a clause which had been filed, you say, with the code authority, by one member and seems to cover the situation applying to government destination costs only. You referred to it as a controlling clause, and

then the clause is set out, with which we are, I think, quite familiar as a matter of record over and over again—the so-called control clause applying to government destination cost.

Mr. Zimmerman: What is the date?

Mr. Wooden: May 25, 1934.

3052 By Mr. Wooden:

Q. Do you know the origin of that clause which is set forth in the letter there, Mr. Reiter?

A. Yes, Mr. Wooden. It was filed by a member of the industry, if my recollection serves me correctly, to be used in connection with the early bids for cement to the Tennessee Valley Authority.

3053 Q. And did it become a matter of quite general acceptance and practice to use a similar control clause on other projects involving Government purchases?

A. It did.

Q. Now, with regard to the matter of filing prices f. o. b. mill, you said this morning, I believe, that some such prices were filed, but that it was exceptional, is that right?

A. That is right.

Q. Was that left to the individual judgment of each concern filing, as to whether it would file an f. o. b. mill price or not?

A. Yes. There was no provision in the code for filing any particular kind of a price, either f. o. b. mill or f. o. b. destination. We received either one as filed.

Q. In the case of delivered prices, my understanding is that you circularized or put out to the other members who might be interested, the filed destination prices, is that correct?

A. Yes.

Q. Did you treat such f. o. b. mill prices as were filed in any similar fashion?

A. Exactly the same.

Q. Did the code provide for this circulation of the prices filed by the various members?

A. The code provided that the prices should be filed with the code authority five days before they became
3054 operative, although the word in the code itself was "effective." On the operative date, that is, five days after the prices were received at the office of the code authority, was the first day at which they could notify their customers of this price whatever it was. The code also

provided that other members of the industry could meet prices filed by others, at which time of the meeting they filed on their own account, and therefore we made it a practice to notify all interested members of the industry of any price filing so that they could avail themselves of that provision of the code as to meeting prices filed by others.

Q. In other words, they could not meet the provision of the code regarding meeting the prices without knowing what they were?

A. That is the point.

Q. And that called for circulation of the information?

A. That is right.

Q. I am showing you a paper that has been previously marked Commission's Exhibit 399-SS for identification. Can you identify the handwriting on that?

A. I can identify this as my own handwriting. (Indicating).

Q. The word "Withdrawn"?

A. Yes. And this is my handwriting (indicating).

Q. What does that mean?

A. The Lone Star of Alabama. The rest of it is not
3055 my handwriting.

Q. Do you know whose it is?

A. I am not sure, no.

Q. Do you know whether it is Mr. J. S. Nelson's?

A. I am not sure. I am not that familiar with his handwriting.

3056 (COM. EX. 399-SS was offered and received in evidence.)

Q. Mr. Reiter, I show you some papers marked Commission's Exhibit 559-A, B and C for identification. They purport to be a copy of the minutes of the code authority May 14 and 15, 1934. Will you accept them as authentic reproduction of those minutes?

A. Yes.

Mr. Wooden: I offer these papers for the record.

Mr. Leisure: No objection.

Examiner Norwood: Received as marked.

(COM. EX. 559-A, B and C was offered and received in evidence.)

Q. It appears from this paper that you acted as secretary of the meeting.

3057 A. That is right.

Q. It appears from the minutes that a telegram had been received from the Deputy Administrator Murray stating that he had been requested by the President to encourage the manufacturers of cement to submit f. o. b. mill prices to prospective purchasers.

Mr. Zimmerman: Is counsel reading?

Mr. Wooden: No.

Mr. Leisure: Have you a copy of that letter?

Mr. Wooden: No. It is one of the earliest exhibits. I do not know the number of it now.

3058 I note that following that in the minutes a discussion ensued and that it was the sense of the meeting that all members prepare a draft or a suggested reply and place these drafts in the hands of the secretary for consideration later in the meeting.

Do you remember whether that was done and the drafts placed in the hands of the secretary?

A. I do not recollect whether it was done. I remember that a reply was sent to the telegram and how that reply was formed, whether from suggestions of various members of the code authority put together later, I do not know, but at least I did not myself put it together.

Q. I guess the answer to my question is in the minutes themselves. They say:

"Upon reconvening about four-thirty p. m., May 15, various suggestions for reply to Mr. Murray's telegram, previously quoted in these minutes, were read," and that upon motion duly seconded it was ordered that a reply be sent.

Then it quotes the reply which I think is the same we have in evidence in the form of the telegram itself, but it sets forth the text of it and I will not read it at this time unless someone wishes to have it read.

I show you a printed pamphlet marked 560 for identification, purporting to be a copy of the amended code for the cement industry, approved May 11, 1935. Will you 3059 accept it as authentic and as being what it purports to be?

A. Yes, sir.

Mr. Wooden: I offer it for the record.

Mr. Leisure: No objection.

(COM. EX. 560 was offered and received in evidence.)

Q. Referring to Article 8, Section 1, would you say that

that put into operation the procedure that you described a few moments ago as to the circulation of prices after they were filed by the individual mills?

A. Yes, I would say that.

Q. This amended code then specifically provided that procedure?

The Witness: So would the first code.

Mr. Leisure: To make the record more intelligible—that is a very short paragraph—I wonder if we could not have that read into the record.

Examiner Norwood: Counsel may read an extract from it.

Mr. Wooden: Do you want it in the record?

Examiner Norwood: Cannot you quote the substance without reading the whole thing?

3060 Mr. Wooden: Well, Section 1 provides that each member shall file with a confidential and disinterested agency of the code authority identified lists of all his price terms etcetera, and that must be done within five days after the approval of the code. Members of the industry must make those public by broadcast quotations to the trade but any member of the industry might revise those from time to time by filing with the agent of the code authority and immediately upon receipt of the revisions, the agency will then, by telegraph or other means, acknowledge receipt and promptly notify all interested members of the revisions and the operative dates. I think that covers the substance of it.

By Mr. Wooden:

Q. Are you sure, Mr. Reiter, that the previous code provided for it in just that way?

A. It did not provide it in the identical language, but the effect was the same. The procedure would not have changed from one code to another.

Q. The procedure was the same, at any rate?

A. That is right.

Q. But the texts of the several codes would speak for themselves as to the formal changes in the procedure?

A. Yes, sir.

3061 Examiner Norwood: Was that a new code, dated after May 15?

Mr. Wooden: May 11.

Mr. Zimmerman: Prior to May 15, your Honor.

By Mr. **Wooden:**

Q. Does this amended code of May 11, 1935, contain a similar provision regarding diversion of shipments and the effect of diversions upon filed prices at destination?

A. It contains a prohibition against diversion or a statement that diversion of shipments of cement will be considered in violation of the code. I do not know, again, whether the wording is exactly the same or not.

Q. It is to the same general effect?

A. The same intent, yes.

Q. Was diversion declared to be an unfair method of competition?

A. Yes; it was declared to be an unfair trade practice.

Q. Now, as I understand this Section 14 on diversion, diversion in and of itself was not considered an unfair trade practice but only in its effect on the destination price referred to?

A. Wherever it would enable a purchaser or user to secure cement at variance from the member of the industry's filed price terms at the point of final destination.

Q. In other words, if there were a form of diver-
3062 sion that did not have that effect, it would not be covered by the prohibition?

A. That is correct.

Examiner Norwood: That would be the case, would it not, so that if it were diverted the freight would be more than if the shipment went to its original destination?

The Witness: Well, the cost where it was diverted, if such thing would happen, from one destination where the destination price was $2.50 to another destination where the destination price was $2.50—that would not be a violation of the code.

3063 Examiner Norwood: If the freight were a greater or less amount by reason of the diversion, would it affect it adversely?

The Witness: If the diversion, Your Honor, were to a point at a different destination price, but where no money could be saved by the customer in so diverting, there would be no violation of that paragraph as I read it.

By Mr. **Wooden:**

Q. Look at Exhibit 557, Article 9. That is the provision for price filing. And then look at Article 8 on the same subject in Exhibit 560 and see if the same procedure

for handling and distribution of the prices filed is covered in both those versions of the code?

A. That is the only investigation of these two paragraphs that you want me to make?

Q. Yes. In other words, it goes back to that matter of procedure for handling the prices filed.

Mr. Leisure: Your Honor, I do not quite understand the purpose of this comparison. I do not know whether counsel for the Commission is criticizing the two codes. I do not understand how it is material in our present inquiry, the two different codes in use.

Examiner Norwood: I think he is showing the different effects of these different rules.

3064 Mr. Leisure: I do not see how either one is material in this case.

Examiner Norwood: Those codes have to be compared, and it will aid in my investigation if he has a line or two on that subject in.

Mr. Wooden: It just goes to the point whether the procedure which he says was the same under both editions of the code was actually provided for in terms under one or both.

The Witness: Mr. Wooden, the wording is substantially different, but to my mind the effect of both transactions is the same and provides for the same procedure.

By Mr. Wooden:

Q. And the same procedure was used in fact under both?

A. Well, this code became effective on May 21 and the Schechter decision was on May 27.

Q. What language in Article 9, Exhibit 557, did you construe as authorizing you to pass on the prices filed to competitors of the mills that filed them?

A. Article 9, Section 1, reads: "Each member of the industry shall file its prices and also terms and conditions of sale with the code authority within five days after the effective date of this code and make same public by broadcast quotations to the trade so that competitors, the
3065 trade, and the buying public may at all times have accurate information relative thereto."

Paragraph 3 of Article 9 says: "Any member of the industry can meet the prices, terms and conditions of sale established by the above method as of their effective date", and so forth.

Q. But that relates to publication by the filing party rather than by the Institute, does it not, or by the Code Authority?

A. That part that I read does.

Q. What I was seeking was whether there was some specific authorization in the code itself for the Institute to pass on to the other members of the industry the prices filed by a particular mill.

The Witness: As I read this, it does not specifically provide that the code authority shall notify all
3066 members of the Institute of prices filed by competitors, but the Code Authority interpreted that in order for any members of the Institute to meet the price terms filed by a competitor, that they had to have knowledge of that price and terms, and therefore notified them, as I have said.

By Mr. Wooden:

Q. I am showing you now, Mr. Reiter, a printed pamphlet marked Exhibit 561 for identification, and purporting to contain the Articles of Association of the Cement Institute and a compendium of established terms and marketing methods, dated December 11, 1935. Will you accept that as an authentic publication and being what it purports to be?

A. Yes, sir.

Mr. Wooden: I offer it for the record.

Examiner Norwood: Is that the one that is now in effect?

The Witness: It was the one that was distributed—a pamphlet that was distributed immediately after December 11, 1935.

Mr. Leisure: No objection.

(COM. EX. 561 was offered and received in evidence.)

3067 By Mr. Wooden:

Q. I notice that this is entitled "Compendium of established terms and marketing methods." Who established them?

A. They were considered to be established in the industry by the Trade Practice Committee who submitted that compendium to the Board of Trustees.

Mr. Wooden: May I have that answer read?

(The answer is read.)

The Witness: Now I would like to make a further answer that what I meant was that the Committee considered that the industry itself had established these marketing methods.

Mr. Zimmerman: You meant it was considered as having been established?

The Witness: That is correct.

3068 By Mr. Wooden:

Q. I note this pamphlet containing the articles of association carries a similar statement as was in the original articles of association declaring one of the purposes to be to establish and maintain all such lawful trade customs and usages for the protection of the cement manufacturer as the Institute may deem advisable and also to adopt and promulgate a code of fair competition for the government of the industry. Is the code of fair competition other than this compendium—if that be so considered—was it ever adopted by the Institute or promulgated by the Institute after the passing out of the N. R. A. Code?

A. There was no code of ethics adopted since that date.

Q. The codes of fair competition referred to here—

A. (Interposing): No codes of fair competition.

Q. Would you consider the compendium as being in any sense a code of fair competition?

A. I do not consider it a code of fair competition.

Q. Even though it contained established terms and market methods?

A. In order to answer that I would have to answer at length. As I said the other day, the trade practice committee attempted, in the interim period, to supervise the operation under the last code on a voluntary basis and to establish or to write up some ethics for the industry

3069 which they hoped that the industry would accept. I with one other, developed some trade practice rules and presented them to a meeting of the trade practice committee at Denver, which meeting was in the fall of 1935, and at that time, for the first time, I saw this compendium or the compendium from which this has been developed and which was of a far different nature than what I myself suggested for their consideration. This is, as it purports to be, merely a statement of conditions which that member of the trade practice committee believed to exist in the industry.

Q. Conditions, did you say?

A. Of conditions.

Q. You mean by that practices and marketing methods?

A. Practices and marketing methods—and having failed in these things, presented to the trade practice committee, namely, the set of trade practice rules which I had and this compendium which was suggested by another member and the committee approved the form of the compendium and ordered that it be further developed, or suggested changes in it in the form presented.

Now, it is not a code in that it does not say "this shall be done" and "that shall be done" but it attempts to state the conditions and the trade practices which were in existence in the industry.

Q. There were a number of marketing methods
3070 covered by the compendium, were there not, which had also been declared unfair by the codes of competition that preceded it?

A. Yes, there were some similar sections.

Q. Referring to Exhibit 556, being the proposed code as revised for public hearings in 1933, and referring to supplement 1 of that code, does it refer to the supplement as being a compendium of fair practices?

The Witness: This supplement in Exhibit 556 says, in the first sentence:

"This supplement 1 to the basic code of fair competition of the Portland Cement Industry and the part thereof and filed therewith with the N. R. A., is a compendium of fair trade practices pertaining and necessary to promote good understanding within the industry" etcetera.

By Mr. Wooden:

Q. Was the provision of the former codes regarding diversion where the effect was to enable the purchaser
3071 to buy at variance with the published destination price was that carried over into the compendium?

A. I do not recollect, Mr. Wooden.

Q. I will refer you to Section 7 of the compendium.

A. It was.

Q. Was the provision regarding the use of transportation agencies, such as we talked about this morning—was that carried over to into the compendium?

Mr. Leisure: I want to object to these questions, your Honor. The exhibits are in evidence and speak for themselves and any argument that is to be made on them can be made at the proper time.

Examiner Norwood: Objection sustained, but I thank counsel for asking it because I will know where to look for the point.

By Mr. Wooden:

Q. As a matter of fact, I will just ask the witness—I think I did ask the witness this question—a general question as to whether a number of general provisions in the code were not carried over into the compendium?

A. Yes; I think you did ask me that.

Mr. Wooden: So I do not want to call attention to all of them.

3072 By Mr. Wooden:

Q. I note in the compendium there are two forms of suggested sales contracts, one a specific sales order and the other a specific sales contract, and in the latter there is a provision to the effect that the buyer agrees to buy at seller's market price at final destination, etcetera. Would you say that that provision was in recognition of the custom and usage of the industry with regard to delivered prices?

3073 The Witness: I would say it was.

By Mr. Wooden:

Q. I note on page 17 of the compendium, it is stated that the foregoing sections of Article 5 illustrate some, but are not inclusive of all of the unfair trade practices encountered in the industry and in violation of the basic principles of fair competition. Can you say what other unfair practices there were that were not covered by the compendium?

A. I do not believe that I can make that answer. If you want me to take time to read all of them that are in there, I might be able to think of others, but I was not charged with any administration of this compendium, and therefore I am not familiar with what is in here except in a general way.

Q. There is one that I wanted to ask you about, and that is in the code approved May 11, 1935, Exhibit
3074 560, there is a provision that "Filed revised prices resulting in price declines shall be retroactive on all shipments made within five calendar days before the operative date thereof, and for such shipments a member of the industry shall issue new invoices on the basis of the

new filed price as soon as such revisions become operative." If I understand that correctly, Mr. Reiter, it means that no member could reduce his price without refunding the difference between the prices that he had made on sales back five days beyond the effective date of his reduction.

A. Yes, that is right, and that provision was in the original N. R. A. code.

Q. It was. It is not in the compendium, I believe?

A. There is nothing about price filing in the compendium.

Q. Do you know whether or not members did continue to make refunds in cases of price declines following the N. R. A. code?

A. No, I do not know, Mr. Wooden.

Q. As a man with sales experience such as you have had, wouldn't you think that would be quite a deterrent to reducing prices to have to refund for the five days prior thereto?

3075 Examiner Norwood: The objection was sustained on that. I think the counsel can ask another question. Do you know anything about the actual practice of that rule? It amounted to a five-day price guarantee, didn't it?

The Witness: No, sir. I know why it was designed in the code.

Examiner Norwood: But it amounted to each manufacturer giving a five-day price guarantee to each customer did it not?

The Witness: That is right. It tried to avoid taking advantage of a customer who was sold immediately 3076 prior to a price decline. That was the purpose of it.

Examiner Norwood: But do you know what the reaction to that was? Did it bring about fewer price reductions? Have you heard any of the members express themselves regarding it?

The Witness: I have heard no objection to it at all during the code period.

By Mr. Wooden:

Q. Were there any price reductions during the code period?

A. Yes, there were price reductions.

Q. Do you know of any cases where the application of that provision was brought up?

A. No, it was not brought to my attention. You mean

where it was complained about by a member of the industry who was subject to it?

Q. Not necessarily complained about, but where the question was brought up in any way as to the application of that provision to an existing state of facts.

A. While I do not know specifically, I know that it has been discussed with our members, in fact there is no provision of that code which has not been discussed with our members many times, I think.

Examiner Norwood: Did anybody complain and ask you to enforce it?

Mr. Zimmerman: You mean this particular provision?

3077 Examiner Norwood: Yes.

The Witness: It was generally accepted as being a good thing for the industry, Your Honor. What was attempted to be presented by that provision was to have some member of the industry say to a customer "Now, I will reduce the price at such and such a time and you will get the advantage of it," and give his customers prior notice of a decline in price. This gave the other members of the industry an equal opportunity to meet that decline in price as the member originally filing it. That was the purpose of that provision.

Examiner Norwood: Was the action of that first dealer considered unethical?

The Witness: Not at all.

By Mr. Wooden:

Q. You said it was considered good practice or something of that sort, didn't you, I believe, to do this?

Examiner Norwood: No. Good practice to meet this action on the part of the first dealer. Was it considered ethical to notify his customers in advance and give him this guarantee in advance and not tell his competitors about it?

Mr. Wooden: This is not a guarantee.

Examiner Norwood: Well, it amounts to that. It is a price guarantee for five days.

3078 Mr. Wooden: It is no guarantee against increase.

Examiner Norwood: No; against reduction.

Mr. Wooden: It is an assurance against decline, so to speak.

Examiner Norwood: Well, that is what he wants guaranteed.

The Witness: May I attempt just once more in a very few words to explain this?

By Mr. Wooden:

Q. Yes.

A. The code provided that prices should be filed, changes in prices should be filed with the Code Authority, whether advance or decline, five days before the customer had notice thereof. Now then, if some member of the industry, in order to secure an advantage to himself, secretly told his customers that there was going to be this decline before the customer should have been noticed, he would gather a lot of business. Now, this provision removed that advantage to a person who violated the code provision and put them all on an equal basis.

By Mr. Wooden:

Q. But at any rate, it prevented a decline becoming effective unless it was made retroactively effective five days?

A. That is right.

Q. A mill could not put a price in or a decline in
3079 effect tomorrow, say?

A. No, without—

Q. (Interrupting.) Without refunding all sales made for five days?

A. That is right.

Q. Do you know whether or not any cases where so-called arbitrary prices were filed to meet foreign competition along the eastern seaboard, that members did refund in accordance with this provision?

A. Undoubtedly they did or we would have had some complaint regarding that not being done.

Q. And can you say whether or not that was being done following the expiration of the N. R. A. code?

A. I do not know, Mr. Wooden.

Q. Can you say whether or not it was done in the fall of 1935 or the fall of 1936?

A. I can not say.

Mr. Wooden: I think at this point, Your Honor, I will excuse Mr. Reiter for the time being temporarily, and probably recall him again this afternoon if we have time. I want now to go into the matter of the production of papers under the subpoenas.

3080 Mr. Wooden: Your Honor has called attention to ten packages which were received by you from the

Riverside Cement Company. The packages are here on your table and unopend and I suggest that each package be given a separate number for identification with the understanding that the reporter is to open the packages and give the contents the sub-letters or numbers as the case may be.

Examiner Norwood: I think that is the most practical way to do it.

Mr. Wooden: Give each package a number.

Examiner Norwood: Here is the letter (exhibiting) which I received from the Riverside Cement Company, which may be incorporated in the record. The letter is as follows:

"John W. Norwood, Esq.,
"Trial Examiner,
"Federal Trade Commission,
"815 Connecticut Avenue, N. W.,
"Washington, D. C.

"In the Matter of the Cement Institute et al, Docket No. 3167.

"Dear Sir:

"We are forwarding to you under separate cover the various documents, so far as we have been able to
3081 identify them, specified in a supoena addressed to this Company in the above entitled proceeding under date of January 22d 1938. You will note that a great many original documents and letters, as distinguished from file copies thereof, are transmitted. You will of course realize that these original documents and letters form a part of the records and files of this Company. We therefore request of you, as a matter of courtesy, that should any of these original documents or letters be received in evidence, or be marked as exhibits for identification only, that the same be photostated and the photostated copies substituted for the originals and letters returned to this company upon such substitution. We feel sure that you will realize the reasonableness of this request and we will appreciate your courtesy in this regard.

"Yours truly,
"Riverside Cement Company,
Signed, "Wm. H. Metcalf, Secretary."

The ten packages which are retained in my possession which were delivered pursuant to that letter, are marked for identification, 562-A to blank, 563-A to blank, 564-A to blank, 565-A to blank, 566-A to blank, 567-A to blank, 568-A to blank, 569-A to blank, 570-A to blank, and 571-A to blank.

3082 These will be numbered by the reporter to be retained in my custody, to be examined by counsel on either side.

Mr. Wooden: Your Honor, if there are any other documents to be introduced either in complete or partial compliance with the subpoenas, we shall be glad to have them.

Mr. Leisure: We have some.

Mr. Jaques: If your Honor please, I have here four folders, each of which has, on the back of it, "L. P. C. Co., February 8, 1939." Then each of those is numbered, in addition, on the back.

Number 1 is followed by "Pages 9."

Number 2 has that same wording, "L. P. C. Co., February 8, 1938; Number 2—pages 13."

Number 3 is marked "L. P. C. Co., February 8, 1938, Number 3—pages 30."

Number 4 reads, "L. P. C. Co., February 8, 1938, Number 4—pages 13."

Examiner Norwood: Will you please go back to number 1?

Mr. Jaques: The first one is marked "L. P. C. Co., February 8, 1938, Number 1—pages 9."

Examiner Norwood: The first one is marked for

3083 identification 572-A to I.

Examiner Norwood: Now, call off number 2.

Mr. Jaques: Number 2—13 pages.

Examiner Norwood: That will be marked for identification 573-A to M.

Examiner Norwood: Now, number 3.

Mr. Jaques: Number 3—30 pages.

Examiner Norwood: That will be marked for identification 574-A to DD.

Examiner Norwood: Now, number 4?

Mr. Jaques: Number 4—13 pages.

Examiner Norwood: That is 575-A to M.

(Each document thus produced was marked for identification as indicated by the directions of "Examiner Norwood.").

Mr. Jaques: If your Honor please, I have delivered these to your Honor with the same understanding and subject to the same objections as heretofore, that they only go to your Honor in your judicial capacity and are not to be submitted to counsel opposing respondents in this case until your Honor has determined the relevancy of the various papers.

3084 Examiner Norwood: It is understood you have the objection and we shall submit them to counsel on either side for inspection prior to their being introduced.

Mr. Jaques: That we make our objection to.

Examiner Norwood: Yes; we have that understanding.

3085 Mr. Herschberger: I have some papers of the Universal Atlas Cement Company. I produce a file of papers from the Universal Atlas Cement Company which are photostats. They are marked in th lower left-hand corner "170 to 326, inclusive." I proffer those to the Trial Examiner subject to the same conditions and with the same objection to their examination by the counsel for the Commission, and with all of the other conditions which I stated in my proffer of the files last Friday.

Examiner Norwood: Yes.

Mr. Wood[redacted]: I take it that both of these last two offers are in partial compliance rather than complete compliance with the subpoenas?

Mr. Hershberger: That is correct. And as I stated before, I do not believe that Universal Atlas will be able to comply with the 20-day extension, but we will do all that we can.

Examiner Norwood: The papers presented will be marked for identification 576-A to AAAAAAA for identification.

(The document referred to were marked for identification "Commission's Exhibits 576-A to AAAAAAA.")

Mr. Leisure: We have some papers, Your Honor, that come from the Giant Portland Cement Company, which we tender to your Honor in further compliance

3086 with the subpoena and stipulation, and in order to save time of making objections, I will simply adopt the proffer of Mr. Jaques and ask that we have the same objection and the same understanding.

Examiner Norwood: The papers presented by Mr. Leisure consist of telegrams, letters, copies, and so forth, and

will be marked for identification 577-A to blank. The same action will be taken with regard to them as heretofore indicated with regard to the other papers delivered under the subpoenas.

(The documents referred to were marked for identification "Commission's Exhibits 577-A to blank.")

Mr. Leisure: We also have the papers, Your Honor, from a supoena that was served on Mr. W. S. Mallory, of the Cement Institute, which we are tendering to Your Honor under the same objections.

Examiner Norwood: I waited here when we adjourned Friday for counsel to indicate whether they wanted copies photostated, but nobody took much interest in it, so I took them on to my office, and in the future I do not see why counsel can not have these photostated prior to presentation if they want photostatic copies. I will use every precaution to preserve them intact.

Mr. Leisure: I am not clear as to what Your Honor means. Do you mean that we should have the whole 3087 file photostated?

Examiner Norwood: If you wish it. There was something said about that Friday, but if you wish to do that, you can do it prior to presentation.

The papers presented on the W. S. Mallory subpoena, consisting of letters and copies of telegrams and so forth, are marked for identification 578-A to blank and will be retained in a similar manner subject to the agreements, objections and exceptions.

(The documents referred to were marked for identfication "Commission's Exhibits 578-A to blank.")

Mr. Leisure: I further tender to Your Honor additional papers in partial compliance, under the subpoena and stipulations, from the Cement Institute.

Examiner Norwood: The papers presented by Mr. Leisure, consisting of a letter and two attached files, are marked 579-A to blank, for identification. They will be retained by me under the same conditions.

(The documents referred to were marked for identification "Commission's Exhibits 579-A to blank.")

Mr. Leisure: Those are the papers that we have now, Your Honor, and as to all those, I tender those to Your Honor under the conditions as described by Mr. Jaques, and I understand we have our objection.

Examiner Norwood: Yes.

3088 Mr. Leisure: And I assume the same ruling will apply—that you are going to turn them over to counsel for the Commission?

Examiner Norwood: Yes, and I will allow them to be inspected by counsel on either side at any time that is convenient.

Mr. Leisure: We can subsequently see the documents which counsel for the Commission has custody of? As Your Honor turns them over we will have an opportunity to see them also?

Examiner Norwood: At any time.

Mr. Leisure: There are other papers which I am informed are to arrive today. We can present those in the morning or hold them until Friday—whichever Mr. Wooden desires.

Mr. Wooden: I think we should take those up in the morning.

Mr. Leisure: Very well; we will bring them in in the morning.

Mr. Wooden: Of course we do not know how many of these others are on the way for arrival today.

Mr. Leisure: I do not know either.

Examiner Norwood: Off the record, Mr. Reporter.

(Discussion off the record.)

3089 Mr. Wooden: I was starting to say that while I do not know, and neither does Mr. Leisure, how many consignments are on the way for delivery here today, apparently there are a good many who have not yet made partial compliance—I will put it that way—and whether the remaining papers that are in transit now will fully satisfy that arrangment for partial compliance, I do not know, of course.

Examiner Norwood: Off the record.

(Discussion off the record.)

Examiner Norwood: Are there any further papers to be marked?

Mr. Wooden: Yes, Your Honor, I think we can go ahead for a little while.

I have here a paper marked 580-A and B for identification, being a photostatic copy of an original letter from Charles L. Hogan to H. Struckmann, both apparently of the International Cement Corporation, dated July 24, 1929. This photostat was obtained by Mr. MacIntyre and he is here to identify it if necessary. I will submit it, however.

to Mr. Leisure, and ask whether the formal identification may be waived on the statement I have made.

Mr. Leisure: Let me see it, Mr. Wooden. (The paper was handed to Mr. Leisure.)

Examiner Norwood: By reason of the fact that it
3090 is very difficult and time-wasting to identify these sub-exhibits where you have five or six alphabetical designations, the reporters are instructed where they pass three alphabets, to use numerals in connection with the alphabetical designations. This makes reference much easier and saves a great deal of time and expense in marking these large volumes of exhibits. Repeating each letter is entirely impracticable.

3091 Mr. Leisure: If Your Honor please, this letter goes back prior to the time that the Institute was organized. It is July 24, 1929.

Mr. Wooden: It discusses the organization of the Institute.

Mr. Leisure: The paper seems to indicate that it was obtained by Mr. MacIntyre in 1931. If Mr. Wooden wants to give us time to read it, I may have no objection, but otherwise I must object to it now as incompetent, immaterial and irrelevant, not on the ground that it is not properly identified,—I do not raise that question. I assume that Mr. Wooden's statement is correct.

3092 EVERETT MacINTYRE was recalled to the stand as a witness on behalf of the Commission, having been previously duly sworn, was examined and testified further as follows:

3093 *Direct Examination by Mr. Wooden.*

Q. Mr. MacIntyre, I show you a paper marked for identification Exhibit 580-A and B, and ask you to tell us what you know about that?

A. The papers marked as Commission's Exhibit 580-A and B are photostats of documents which were furnished to me by Mr. H. C. Koch and Mr. John Nylan and Mr. Charles Hogan of the International Cement Corporation in their offices at 342 Madison Avenue, New York, on July 8, 1931.

Q. The papers themselves were provided by them? The photostats themselves were provided by them?

A. They furnished me the papers. After I had selected the papers from their files, photostats were made of the papers, and these are the photostats so made.

3094 Examiner Norwood: You found this paper in the office to which it was addressed?

The Witness: In the files of the International Cement Corporation, which Mr. H. Struckman was at that time president and Mr. Charles Hogan then vice president.

Examiner Norwood: There is no question of this being Mr. Hogan's signature, is it?

Mr. Leisure: No, we make no question about that, and as I say, we make no issue on the identification. We merely make our objection that it is incompetent, immaterial and irrelevant and not binding on the other respondents who have nothing to do with the transaction and who never saw the letter.

Examiner Norwood: I think it has to do with the activities of the Cement Institute.

Mr. Zimmerman: Does it refer to the Cement Institute?

Mr. Wooden: I think so.

Mr. Zimmerman: Well, you think so, but does it?

Mr. Wooden: Let me look at it. (Examining paper.)

Mr. Zimmerman: There was no Institute at that

3095 time unless I am misinformed.

Examiner Norwood: It relates to the formation of the Institute, doesn't it?

Mr. Wooden: Of a proposed association.

Mr. Zimmerman: It does not necessarily follow because some gentleman in this document here are discussing some organization, that that refers to this respondent here at all.

Examiner Norwood: Not necessarily.

Mr. Zimmerman: That is a conclusion that is not based upon anything either in the record or in the document.

(COM. EX. 580-A and B was offered and received in evidence.)

3098 Washington, D. C.,
Wednesday, February 9, 1938.

3099 Mr. Wooden: First I would like to inquire whether there are any papers that were en route yesterday which have arrived in response to the subpoenas?

Mr. Leisure: I believe there are.

Mr. Wooden: I suggest we dispose of those first.

Mr. Leisure: To save your Honor's time, we have numbered the sheets this time before handing them in.

Examiner Norwood: I certainly appreciate that.

Mr. Leisure: We have additional papers here from the Ideal Cement Company.

Examiner Norwood: Mr. Leisure has just handed me one package containing seven sheets of letters, copies and telegrams, which may be marked 581-A to G for identification.

Mr. Leisure: The next is the Nazareth Cement Company.

Examiner Norwood: How many sheets are there?

Mr. Leisure: Eight.

Examiner Norwood: Let them be marked 582-A to
3100 H for identification.

Mr. Leisure: The next is the Giant Portland Cement Company.

Examiner Norwood: How many sheets there?

Mr. Leisure: Two sheets.

Examiner Norwood: Mark them for identification 583-A and B.

Mr. Leisure: The next is the National Cement Company—13 sheets.

Examiner Norwood: Mark them 584-A to M for identification.

Mr. Wooden: Is that the National Cement Company?

Mr. Leisure: Yes.

Mr. Wooden: Of Birmingham?

Mr. Leisure: Yes. The next is the Lone Star—69 sheets.

Examiner Norwood: Mark them 585-A to QQQ.

3101 Mr. Leisure: I have four packages here, Your Honor, from the Penn-Dixie Company and they are divided into the subject-matters to which the papers relate. One of the packages is 168 sheets, pertaining to that subject-matter.

Examiner Norwood: What subject-matter is that? Can you state off hand?

Mr. Leisure: No, I do not know what it is. That is the way it came to us.

Examiner Norwood: Let that be marked 586—how many sheets?

Mr. Leisure: 168.

Examiner Norwood: Let it be marked 586-A to 7L.

Mr. Leisure: This (exhibiting) is another carbon copy of a letter pertaining to another subject-matter.

Examiner Norwood: Let that be marked 587 for identification.

Mr. Leisure: Here is another subject-matter apparently containing a letter and a carbon copy (exhibiting).

Examiner Norwood: Just two sheets?

3102 Mr. Leisure: Yes.

Examiner Norwood: Let that be marked 588-A and B.

Mr. Leisure: And another containing 19 sheets.

Examiner Norwood: Let that be marked 589-A to S, for identification.

Examiner Norwood: These will be handled just as the others and you have the same objection and exception.

(Each document thus produced was marked for identification as indicated by the directions of "Examiner Norwood".)

3103 Mr. Wooden: It is my understanding, your Honor, that the remaining number to whom subpoenas have been issued and who have not made the partial compliance agreed upon, that default will become effective as of yesterday.

Mr. Leisure: Your Honor, we are somewhat at a disadvantage on that as to knowing what that situation is. We have not been able to find out from the Commission how many subpoenas were issued, so we have no way of knowing at this moment what companies have complied and what ones have not. The papers that have been sent in to us, we have brought on here as fast as we have gotten them. If we can find out who has been subpoenaed and can communicate we may be able to cooperate to some extent.

3109 Mr. Wooden: Yes. Now, with reference to the so-called Clark and Burns material:

Mr. Leisure suggested yesterday we make some sort of informal arrangement by which the matter could be sub-

mitted to, and decided by, the Commission. The situation is complicated somewhat by the fact that the same question is involved in the subpoenas issued to other parties covering such material that would come within the general category of the Clark and Burns material, including communications with Clark and Burns and also the fact, as I understand it, that counsel for the various companies are raising the question of the production of the papers under those subpoenas.

In view of those circumstances, counsel for the Commission think it better that the whole thing be put upon the same basis; in other words, that before the Commission is called upon to decide anything about the matter, that a subpoena be issued for the Clark and
3110 Burns papers in the hands of their present custodians and we are so recommending the applying for the issuance of that subpoena.

I might say that we are asking that it be made returnable a week from Thursday, which I believe is the 17th. This length of time is suggested in order that Mr. Leisure may have abundant time in which, if he so desires, he may move the Commission to vacate the subpoena.

Counsel for the Commission believe that it is better that this matter be settled upon the basis of a formal demand for the papers in the form of a subpoena, than upon the basis of an informal request, such as it stands in now and which, as I said at the outset, differentiates the papers in the possession of Mr. Leisure's firm from those in the possession of other parties from whom subpoenas have already come.

Mr. Leisure: There seems to be some misunderstanding in Mr. Wooden's mind as to what our suggestion was. He is now suggesting they serve a new subpoena and test the matter out on the question of the new subpoena. That was not my suggestion at all. My suggestion was that we test the matter out on the subpoenas which have already been served and that was my motion, I see no purpose in
3111 serving us, as attorneys, with a subpoena for this material unless, for some reason, Mr. Wooden wants to do that.

Mr. Wooden: I stated the reasons.

Mr. Leisure: I would like to go forward on my motion on the subpoenas that are existing. I may say, as to the material we have, there is no necessity whatever of serving

subpoenas on us as attorneys. If the Commission rules that this material is material that should be turned over, it will be turned over on the subpoenas that are now existing and there is no necessity whatever for that practice. I made my motion on the subpoenas which have been served and I would like to be heard on that and I see no useful purpose in serving us with a subpoena and starting over again.

Mr. Wooden: Well, I think I stated as fully as I could, the reasons which led to the action indicated, and I do not know that I can add any further to it. It necessarily involves a declination of the proposal that we agree to present the matter informally to the Commission on the informal request for the production of the papers.

Mr. Leisure: Now he is confusing the thought again that it is a refusal of something that I requested. I did not request that he serve a subpoena on us and then that we take that subpoena and have a hearing on it.

3112 I requested that we go before the Commission and get a direction as to what we should do with these papers we have in our possession and when we got the direction as to what we shall do with them, then we will comply.

If the law is that this material is relevant and material and should be considered by the Commission, it will be here.

Examiner Norwood: Well, did counsel for the Commission propose to withdraw one of these subpoenas and substitute another for it?

Mr. Wooden: Oh, no. The Clark and Burns subpoenas were served. Clark and Burns reported that they had turned over the papers to counsel for the respondents. Counsel for the respondents raised the question and want to debate the question with the Commission as to whether or not they should produce those papers on the informal request that has been made on them as custodian.

Mr. Leisure: Oh, no; that is not the issue at all.

Mr. Wooden: That is the way I understood it.

Examiner Norwood: Respondents might write out their motion and hand it to the secretary to be heard in regard to any of these subpoenas duces tecum.

Mr. Wooden: There is no legal basis on which the

3113 question can be decided, in the absence of the subpoena. Do you want us to turn these over on the informal request—

Mr. Leisure: There have been supoenas served, and served on all these respondents we represent and we have to advise them. We do not want to take the responsibility. We want to get a ruling. If it is proper to turn the papers over, we want to turn them over, and if we are to be criticized later for it, we do not want to do it. Surely we should get a hearing on those subpoenas as to whether we are obliged to. That is my point.

Mr. Wooden: It amounts to a proposed request on the Commission to vacate the subpoenas already issued in so far as it relates to this material.

Examiner Norwood: I understand he wants to go before the Commission and ask for an interpretation.

Mr. Leisure: That is it. We want to know if this is material we should turn over.

Mr. Wooden: We have already interpreted the material as coming within the terms of the subpoena and I do not see what there is to debate about.

3114 Mr. Leisure: Then Mr. Wooden should not fear to go before them again.

Mr. Wooden: I do not fear it. I do not want to bother them again.

Examiner Norwood: I can merely advise counsel that if he wishes to be heard by the Commission on that, he can file his motion with the Secretary, and the Commission will say whether or not they will hear it.

Mr. Wooden: I might say that the return date of the 17th was suggested in order that we would not prevent such a motion being made and preventing having time for the matter to be heard.

3115 Mr. Wooden: Your Honor, after discussing with the chief counsel, participated in by counsel for the Commission and counsel for the Institute, counsel for the Commission have decided that they will not press or apply for the issuance of a subpoena at thie time, and leave the way open to Mr. Leisure to file such motions as he desires, so that the question at issue may be presented to the Commission and decided by it.

GEORGE H. REITER, was recalled as a witness on behalf of the Commission, having been previously sworn, was examined and testified further as follows:

Direct Examination by Mr. Wooden.

3116 Q. Mr. Reiter, I understood from your testimony yesterday with reference to this provision of the code relative to price declines and the retroactive extension to the five-day period that the purpose of that was to prevent parties in competition with each other having an advantage over one another by reason of the extension of the decline to some and not to others. Do I fairly state it?

A. I would state, that in my opinion it was to prevent the person following a decline from anticipating the decline to the detriment of their competitors.

Q. The provision, however, was not limited to cases of sale to commercial buyers on resale, was it?

A. No, it was applied to all sales, all prices filed.

Q. In other words, the purchases for government use or any direct purchaser who did not resell would come under the terms of the provision?

A. That is right.

Q. If the purpose was only to prevent the anticipation of a decline to the detriment of competitors, would not the competitors who had bought prior to the five-day period be adversely affected by the extension of the decline to those who had bought within the five-day period?

A. May I have your question again?

(The question is read.)

The Witness: Well, I am speaking of competitors
3117 in the cement industry, Mr. Wooden, and not to the purchasers of cement.

By Mr. Wooden:

Q. I thought you had reference to the competitors in the resale of cement.

A. And may I answer further that that may not be the only reason for this retroactive period of five days. In other words, whenever there is a decline, the customer who has bought immediately before this decline believe naturally that he would be better off if he had waited until the decline, so to the extent of five days they were trying to protect such customers, in my opinion.

Q. Customers who had bought seven or ten or twelve days prior to the decline would be in a disadvantageous position, would they not?

A. That is right, but you have to stop it somewhere.

Q. There is no such thing as a complete guarantee against decline without regard to period, is there?

A. No; to the larger customers a five-day retroactive period might be entirely adequate because their stock moves faster, but for the smaller customer it may not be a complete protection.

Q. You mean, then that the smaller customer would be adversely affected by it rather than the large?

A. It all depends on how the cement which he had 3118 purchased moves—how fast it moves.

Mr. Wooden: Your Honor, at this time, I wish to offer a paper previously identified as Commission's Exhibit 320-E for identification. I believe it was one of those identified by Mr. Travis Brown and it is a photostatic copy of a telegram to the Copley Cement Company from George F. Coffin, dated May 28, 1935. I believe Mr. Coffin was then president of the Institute? Is that correct?

The Witness: Yes, that is correct.

Mr. Leisure: We have no objection to the exhibit, Your Honor.

Examiner Norwood: It will be received and marked as Commission's Exhibit 320-E.

(COM. EX. 320-E was offered and received in evidence.)

Mr. Wooden: I might just observe that this is calling on the members of the Institute to continue to observe all of the provisions of the code of fair competition and some special reference is made to the provisions regarding wages and hours, I believe. This was the day after the Schechter decision.

By Mr. Wooden:

Q. Mr. Reiter, I am showing you a paper marked 3119 for identification Exhibits 590-A, B and C. These purport to be copies of circulars sent out by the Institute, one over your name and the other over the name of Mr. Coffin as president. Will you accept those copies as authentic reproductions of what they purported to be?

A. As to Exhibit 590-A and B, I remember sending out a letter on this subject of which this appears to be a copy. I do not believe it is a photostatic copy, but so far as I know

it is a correct copy, and while I do not remember 590-C, the letter signed George F. Coffin, President, I have no doubt it is a correct copy of the letter.

Mr. Wooden: I offer these exhibits for the record.

Mr. Leisure: I did not hear whether you said these were attached—whether this (exhibiting) was attached to the letter when you sent it.

The Witness: It was not attached to the letter when I sent it.

Mr. Leisure: How does this happen to be attached to the letter?

Mr. Wooden: I merely had them numbered together because they related to the same subject and the dates were only two days apart.

Mr. Leisure: I see.

Mr. Wooden: In other words, it is the transition period from the code authority to the trade practice committee.

Mr. Leisure: Exhibit 590-C is merely typewritten copy. Is that an authentic copy?

Mr. Wooden: I understood the witness to say he had no doubt of these being authentic copies.

Mr. Leisure: Did that apply to the Coffin letter?

The Witness: Yes; I have no doubt of it, althought I have no recollection of seeing it. It means to be a letter sent out by Mr. Coffin at that time.

Examiner Norwood: Well, they came from these files.

Mr. Wooden: I do not know what you mean by "these files" but I think I can tell you in a moment.

Mr. Leisure: No objection.

Examiner Norwood: Received as marked.

COM. EX. 590-A, B and C was offered and received in evidence.)

Mr. Wooden: I merely state, Your Honor, that these relate to the appointment of the trade practice committee to carry on the functions of the code authority.

By Mr. Wooden:

Q. I Now show you, Mr. Reiter, papers marked for identification as Exhibit 591-A to L, inclusive, and they purport to be photostatic copiies of the minutes of the trade practice committee. Will you accept them as authentic reproductions?

Mr. Zimmerman: May I ask, if Your Honor please, as to Exhibit 590-A, B and C? What file did they come from?

Examiner Norwood: When I made my remark I had it confused with this Exhibit 320.

Mr. Wooden: It came from the files of F. C. Parsons who, I understand, is connected with the Volunteer Portland Cement Company.

Mr. Zimmerman: Wo obtained them?

Mr. Wooden: It was obtained by our Mr. McDonald.

The Witness: I accept these as photostatic copy of the minutes of the fair trade practice committee, as shown.

Mr. Wooden: I offer those for the record.

3122 Examiner Norwood: Is there any objection to the offer?

Mr. Leisure: We have no objection.

Examiner Norwood: Received as marked.

(COM. EX. 591-A to I was offered and received in evidence.)

By Mr. Wooden:

Q. I notice, Mr. Reiter, in Commission's Exhibit 591-C, the minutes of the Trade Practice Committee for July 9, 1935, a reference to correspondence with the Monolith Portland Cement Company regarding that company's bid to the Indian Service for delivery at McNary, Arizona, and the Chairman was instructed to make further reply to that member indicating wherein its bid had violated fair trade practice. Will you describe the circumstances of that matter?

A. I am afraid I don't remember it, Mr. Wooden.

Q. Do you remember what particular fair trade practice was alleged to be violated in that case?

A. I don't remember the case.

Q. Reference is made also in the same paper to a vote that the Chairman be authorized and instructed to call group meetings of members. Such group meetings, as I assume, were held from time to time?

A. I do not know whether we actually had any

3123 group meetings as a result of those instructions from the Trade Practice Committee or not. It would depend upon the dates and the minutes of such meetings. I remember—well, I cannot say—I don't remember.

Q. Was there any condition at that time which called for group meetings on any different basis than had existed prior to that time?

A. Well, except that we had a trade practice committee

and the code period was at an end, and the members of the Cement Institute, in my opinion and probably in those of the Trade Practice Committee, were not completely informed, although we tried to keep them informed, of what the Cement Institute was doing, and the idea behind these suggested group meetings was to inform the membership of the activities of the Cement Institute, which I thought at least were worthwhile to the industry so as to encourage their continued membership in the Cement Institute.

Q. Did you discuss at group meetings the matter of any proposed compendium of fair trade practices?

A. If there were group meetings, I would discuss at those meetings everything the Cement Institute was doing, and as the compendium was presented at that Denver meeting, after the date of that Denver meeting, I would also have discussed that.

Q. Reference is made in Commission's Exhibit
3124 591-H, the minutes of August 6th and 7th, 1935, to a protest against Administrative Order 27 of the P. W. A. Do you know what that was?

A. I believe that that referred to the preference given to American manufactured portland cement over imported portland cement. The figures escape me, but I believe that that Administrative Order gave preference of 15 percent to the American manufactured cement.

Q. You were not protesting the existence of the preference, but the inadequate amount of it?

A. The preference was entirely inadequate.

Q. The same exhibit refers to a discussion of bids made by members in Arizona and New Mexico attempting to avoid the state sales tax. Was some of the members absorbing the state sales tax?

A. My recollection of that, Mr. Wooden—

3125 Mr. Wooden: I will reframe it.

By Mr. Wooden:

Q. Was there brought up at this meeting or at any time a charge that members in Arizona and New Mexico were absorbing the state sales tax?

A. My recollection of the discussion and the information that I gained at that meeting was that interstate
3126 shipments into New Mexico not being subject to the state sales tax, but sales by dealers being subject to the state tax because the cement came to rest at their warehouse within the state, that certain members of the indus-

try were shipping in interstate commerce to the customer, collecting the payment from him and paying out of that a commission to the dealer at that point, thus avoiding the sales taxes in New Mexico, and the discussion was to the effect that this was a reprehensible practice.

3127 Q. The result was, as I understand it, that dealers who bought from out of the State, got their cement laid down in New Mexico, say, for less than those who bought it within the State?

A. All dealers in New Mexico buy their cement without the State because there is no cement plant in the State.

Q. Were there any advantages to some dealers that others did not have under the practice that was objected to?

A. Unless all of them used the same practice, the advantage would be with those dealers who handled, or whose cement supplier handled, the cement in the manner I have described.

Q. That had some effect upon the destination price, did it not?

A. Well, I can not say as to that. It would depend upon what was done with this State sales tax and that I do not know—whether it was absorbed or not, either by the dealer or the cement manufacturer.

Q. Was it considered a reprehensible practice for the manufacturer to absorb it?

A. Not at all, but it was considered a reprehensible practice, as I remember the discussion, to avoid paying a tax assessed by the State of New Mexico.

Q. Did you have that question in States other than Arizona and New Mexico?

A. Right now we have it in many States.

3128 Q. I note here in the minutes of September 25 and 26, 1935, Exhibit 591-K, that a resolution was adopted declaring that trade practice rules as indicated by the compendium are wholesome for the industry and that, under proper conditions, within the industry, the committee favored the revision of Article 5, providing for the filing of price declines, to become effective on acknowledgment from the agent and retroactive five days from the date of the acknowledgment.

Now, that particular retroactive provision was in the code, we have seen.

A. Right.

Q. But I do not recall that it is in the compendium.

A. This Section 5?

Q. Article 5.

A. This Section 5 was in a draft of the compendium—probably in the first draft—but members of the trade practice committee themselves did not agree; in fact, the majority believed that open price filings should be discontinued and they felt also that the industry, as a whole, were of that opinion, and, therefore, it was eliminated with the explanation of those members of the industry who might think it should be continued.

Q. But the minutes here indicate that that was unanimously carried in the meeting—that resolution. You say there was a division of opinion among the members of the committee.

3129 A. I call your attention to the fact that they did not say it should be retained. They say under proper conditions they think it would be a good thing.

Q. What were the proper conditions you refer to?

A. Well, it had become a farce by that time because very few cement companies were continuing to file their prices and, under such conditions, no one believed that it was advisable to continue.

Q. I note in the same minute, 591-K, the chairman called the committee's attention to the fact that two or three members of the industry had indicated their desire for the committee to request Captain H. E. Collins, Assistant Director of Procurement of the United States Treasury Department, to further direct his State Procurement Officers, indicating that they may not expect bids from cement manufacturers or dealers f. o. b. cement plants.

Was that sort of communication given to the Procurement Division of the Treasury Department?

A. No, sir.

Q. I see that in the same paragraph it says that the sense of the meeting was that these matters must necessarily be handled by individual members with the State Procurement Office and that it was unreasonable to request Captain Collins to handle these matters as indicated, for the industry and the dealers.

3130 Now, during this period of the trade practice committee, did you have complaints from time to time of violation of fair practices which you investigated?

A. We had a few, but a very few, compared to the code period.

Q. Was your procedure in handling such matters the same as it was under the code?

A. We attempted to handle them in the same manner, which was, by the way, securing complete information relating to these complaints, but as I have indicated before, our activities in the trade practice committee in this respect were largely unsatisfactory and unsuccessful.

Q. Did you ask the parties complained of what they had to say about the complaints made and then, did you transmit their replies to the parties who made the complaint?

A. Yes, without disclosing the name of the complainant to the party complained against.

Mr. Leisure: I am not sure about the period of time we are talking about.

Mr. Wooden: These minutes are all after the code. I think the last one I had was September, 1935, if I am not mistaken.

The Witness: As I have said, I do not remember how long we tried to continue this handling of complaints in the trade practice committee.

3131 Mr. Leisure: It was not for years, was it?

The Witness: No; it was just a few months after the trade practice committee was formed, which was in June, 1935.

3132 Q. Well, how long did the Trade Practice Committee itself continue?

A. They continued until the annual meeting of the Cement Institute in the fall of 1935, and that meeting is usually held in December, and I think it was in that year.

Q. Is the paper I had you marked Exhibit 592-A and B for identification an authentic mimeographed copy of the circular issued by you under date of July 11, 1835? (Handing paper to witness.)

A. (Witness examining paper.): Yes, it is.

Mr. Wooden: I offer it.

Mr. Leisure: No objection.

Examiner Norwood: Received as marked.

(COM. EX. 592-A and B was offered and received in evidence.)

Mr. Wooden: Your Honor, there is a paragraph here that I should like to read.

Mr. Zimmerman: Again I object to encumbering the record with reading paragraphs from an exhibit. The whole exhibit has been received and is in evidence. If he wants to read it off the record, I have no objection.

Examiner Norwood: Can the counsel refer to it with a short statement?

3134 By Mr. Wooden:

Q. Is this circular of July 11th your own composition and statement, Mr. Reiter?

A. Yes, it is.

Q. Will you refer to that second paragraph of the circular of July 11th and point out in the minutes of July 9th to which reference is made where it was stated that the provisions of the code were to be continued in effect as a voluntary agreement among the members?

3135 A. This paragraph refers to the first meeting of the Trade Practice Committee in June and not on July 9th.

Q. Have we the minutes of the June meeting to which reference is made?

A. I do not.

Q. Well, all right, I will pass that. Now, reference is made to a group meeting or regional meeting at Denver, on the second page. Was that meeting at Denver held?

A. It was.

Q. Do you recall whether group or regional or sectional meetings had been held at other points during that period?

A. I do not recall regional meetings which I attended, but there may have been some.

Q. Were those meetings held under the call or under the supervision of the District Trustees?

A. Now, what meetings are you talking about? Meetings of the Trade Practice Committee or meetings which I would encourage and which I attended myself?

Q. I mean the sectional or regional meetings that are referred to in the circular.

A. Well, such regional meetings as were had would be called by the District Trustees of that District.

Q. Did he preside when such meetings were held?

A. He usually did. I do not remember such meetings, —many such meetings. I do not specifically remember any.

3136 Q. Were minutes kept of such meetings?

A. If they were Cement Institute meetings, minutes were kept.

Q. If they were group meetings just of members of the Institute, then what?

The Witness: Well, I do not recall any group meetings which were not meetings of the Cement Institute.

By Mr. Wooden:

Q. As general manager, were you called upon from time to time to attend these regional meetings?

A. I had the privilege of attending all meetings of the Cement Institute. I did not attend very many; I attended some.

Q. Did you attend some meetings of the cement
3137 mill representatives that were not meetings of the Institute?

A. Yes.

Q. How were such meetings arranged for?

A. Well, they were generally social meetings which I myself did not arrange, and I merely presumed that they were called by someone in that region.

3138 Q. If called by the trustee for that district, then they would be Institute meetings? Is that right?

A. I presume so, if he acted in this capacity as trustee.

Q. Then I understand you attended some meetings not called by the district trustees?

A. I attended one or two that I do not know who they were called by.

Q. You referred to them as social gatherings. Was there not any business discussed at all?

A. I recollect one at this time which was largely given over to golf and eating. I know that I talked to anybody that was there about such things as I had in my mind pertaining to business. I did not refrain from talking about business.

Q. Of course that is understood. What I referred to, of course, was a meeting where golf was not played in the room, but business matters were discussed in the room.

A. I do not recall such meeting, which was not a Cement Institute meeting and of which minutes were kept.

Q. I am showing you papers marked 593-A to E, inclusive, for identification. It purports to be a photostat of a letter from H. C. Lombard, addressed to you and containing some pages giving the members of committees of the Institute. Will you identify those papers as authentic copies of what they purport to be?

3139 A. Yes, I will. I remmember the letter.

Mr. Wooden: I offer these in evidence.

Mr. Leisure: Are these papers attached to the letter a part of the letter?

The Witness: That is right.

Examiner Norwood: Is there any objection?

Mr. Leisure: No objection.

(COM. EX. 593-A to E inclusive was offered and received in evidence.)

By Mr. Wooden:

Q. Reference is made here, Mr. Reiter, to a questionnaire set to the members of the industry. It is under the heading of Marketing Research Committee, and the questionnaire was sent to members of the industry and then reference is made to Clark and Burns. How was that questionnaire prepared?

A. To the best of my knowledge, it was prepared by Professors Clark and Burns in a manner which they thought would give them complete information to study the marketing methods of our industry when filled out by members of the industry to whom it was sent.

Q. Did the Marketing Research Committee, or the 3140 members of it, collaborate in the preparation of the questionaire?

A. They may have. I do not know.

Q. Were replies to the questionnaire handled by you in any way?

A. Not at all. I believe that they were sent direct to Professors Clark and Burns at Columbia University, as confidential information.

Q. You mean they were sent direct to them rather than transmitted through the Marketing Research Committee?

A. That is right.

Q. Will you accept the paper marked Exhibit 594 for identification, as an authentic copy of a letter sent by you to the addressee indicated, under date of August 19, 1935?

A. While I do not recollect the letter, it is in the form of letters which we sent out and I assume it to be correct.

Q. You have no reason or desire to question it?

A. No.

Mr. Wooden: I offer it.

Mr. Leisure: This seems to be just a typewritten copy. It is not even a carbon copy, Mr. Wooden. Do you know where it came from?

Mr. Wooden: It came from Mr. Neyland's files, by one Mr. Widman.

By Mr. Wooden:

Q. Was it your custom, Mr. Reiter, to send copies of
3141 your letters to other members of the Trade Practice Committee?

A. It was.

Examiner Norwood: Received as marked.

(COM. EX. 594 was offered and received in evidence.)

Q. I notice in this paper you quote presumably a letter of complaint received from some un-named person about prices quoted on a certain job and that your informant attributes the discrepancy in the delivered price to an error. Did you also attribute it to an error?

A. I had no reason to attribute it. I just pass along such information as I receive and tell him the lowest prices on file in our office.

Q. Now, were the filed prices that were in the hands of the Code Authority, taken over by the Trade Practice Committee after the expiration of the code?

A. Yes, they were continued until—

Q. The filed price was continued until notice of a change was given?

A. That is right.

Q. Do you recall what the outcome of this particular instance was—whether the Wabash Company, which was complained of—what their answer was?

3142 A. No, I do not recall. I do not recall whether we got an answer or what the outcome was.

Q. Did you retain all the trade practice committee files down to the expiration of its activities and longer and, if so, how much longer?

A. If I may, at this time—you asked me about the code authority files the other day—I would like to make a statement which would be inclusive of all files of the code authority and the Cement Institute.

Q. I am asking about the trade practice committee files.

A. All right. When the office of the Cement Institute was moved from Chicago to Washington, we retained such files as we considered current, all files for the year 1936, which would not include trade practice correspondence, but generally we discarded all files prior to that year which would include files which we did not consider important or current which had some trade practice correspondence in them.

3143 Q. That would explain why some documents would be present in other files like in this case, and not in the Trade Practice Committee's files?

A. Undoubtedly.

(COM. EX. 279-A and B was offered and received in evidence.)

Q. You appear to have been on both ends of those letters, that is you wrote one and received the other. Do you remember that, Mr. Reiter? (Handing paper to witness.)

A. (Witness examining paper.) Yes.

Q. I notice you did not answer directly Mr. Brooke's inquiry or question.

3144 Q. Mr. Brooke of the Monarch Company, the writer of Exhibit 279-A asked you whether bidding at the mill was contrary to customary trade practices. Was it contrary to customary trade practices?

A. Well, I think that my answer is an answer to that. I tell him that we do have some prices filed f. o. b. mills, and therefore to this extent it is a trade practice.

Q. I believe you said they were few in number or something like that?

A. That is right. That was a fact.

Q. Did you have requests from members as to the mill prices that were on file?

A. Yes, we have had requests like this, "Please advise us of all prices which might affect a certain letting." Then we would make the best search that we could, at mill prices or destination prices if it was government destination cost, and we would do our best, and it was generally pretty thorough to furnish the information sought.

Q. Did you in your answer treat the government
3145 destination cost as being an f. o. b. mill price?

A. We treated it as a price. In my opinion, it amounts to an f. o. b. mill price.

Q. And in your answer as to the filing of f. o. b. mill prices, you had in mind then, I take it, the government destination prices also?

A. I imagine that we did give them government destination costs as well as mill prices when they asked for mill prices.

3146 Q. Showing you exhibits marked for identification 274-E and A—that is the order in which they are put together—do you recall the correspondence that is embodied in these papers?

A. I do not recall that but they seem to be copies of letters that were received and written.

Mr. Wooden: These papers were identified, your Honor, by Mr. Widman as copies of papers in the files of Mr. Neylan and were given those numbers indicated for identification.

I will offer them at this time.

Mr. Leisure: Your Honor, one of these letters is
3147 from Mr. Johnson who has been on the stand. It seems to me the proper time to offer Mr. Johnson's letter was when he was on the witness stand and not now.

Examiner Norwood: He can prove it by this witness if he knows about it.

Mr. Wooden: The correspondence was, between Mr. Johnson and the witness. I do not know that I was aware of the existence of the letter at the time Mr. Johnson was on the stand. They are identified by Mr. Widman.

Examiner Norwood: They will be received as marked. Is that A and E?

Mr. Wooden: Yes; they have been rearranged, because one is a reply to the other and they were given numbers without regard to that.

(COM. EX. 274-A and E was offered and received in evidence.)

Q. Will you say why it was, Mr. Reiter, your office would not issue the notices for the meeting that is referred to there?

A. May I see the date again?

Q. Yes.

A. (After examining paper.) If that was a Cement Institute meeting referred to, the notice would be issued by the secretary and, at that time, I was not secretary of
3148 the Cement Institute.

Q. Where was the secretary?

A. The secretary was in New York

Q. Was the matter referred to by Mr. Johnson in his letter discussed at the September meeting?

3149 The Witness: I don't know. I should say that the minutes would be the best answer to that. I don't know what I had in mind at the time I made that answer as to the subject to be considered at this meeting in Chicago.

By Mr. Wooden:

Q. Was Mr. Johnson there at the meeting in Chicago?

A. I don't remember.

Q. Can you explain what agreements of the cement code were referred to here in September, 1935?

A. I don't know, of course, what Mr. Johnson had in his mind. He may have referred to the obligation of all industry to adhere to the N. R. A. code when it was in existence. Outside of that, there were no agreements, so I don't know what he could refer to.

Q. Did I understand you to say, Mr. Reiter, that there was no agreement among the members following the expiration of the N. R. A. code?

A. That is right.

Q. In your language in this circular of July 11, 1935, Commission Exhibit 592-A, did you not refer to the continuation of all provisions of the code as comprising a voluntary agreement among the members (handing paper to wtiness)?

A. (Witness examining paper): That phrase is used in this letter and was my own statement appearing
3150 in the letter, but being a voluntary agreement and described as such, it was, in my opinion, an agreement until somebody decided not to follow it.

Q. I do not follow that, I am afraid.

A. In other words, it is described there as a voluntary agreement to apply during the interim period with the code provisions, and I presume that that is correctly described, but inasmuch as it is described as a voluntary agreement, it is subject to change without notice.

Q. As all voluntary agreements are?

A. As all voluntary agreements are.

Q. So far as the resignation from the Institute was concerned, however, that was prohibited, was it not, unless the dues be paid for a year in advance?

A. No. When a member of the industry became a member of the Institute, they subscribed to its articles of association. They were free to resign at any time, but at that time they must continue paying dues for 12 months.

Q. I should not have said it was "prohibited". It was subject to that penalty, if you can call it a penalty.

A. Well, my difference, Mr. Wooden, is this, that he resigned at the time he stated, but he paid dues beyond that.

Examiner Norwood: How much were the dues?

3151 The Witness: They varied, your Honor. I do not recollect at this time, but they ran from, at one time, a quarter of a mill to as high as about a mill and a half or a mill and three-quarters per barrel of shipment.

By Mr. Wooden:

Q. What did such dues amount to in the case of the larger members, expressed in dollars and cents in the year. What would that amount to?

Mr. Leisure: Is that material—the amount of dues?

The Witness: What dues shall we assume, inasmuch these dues varied?

By Mr. Wooden:

Q. Take the figures you gave.

A. Well, that quarter of a mill per barrel would, for the largest shipper, in the years 1933 to 1936, amount to $2,500 a year. I think my decimals are correct.

At the rate of a mill and three-quarters per barrel, which I believe was the maximum, it would be seven times that, or $17,500 per year. That is the largest shipper.

Q. And what determined that maximum rate? When was that in effect?

A. I cannot answer that specifically. It depended upon the activities, and, may I say that there were two classes of dues—general and special dues.

Q. Is this inclusive of both classes of dues?

3152 A. What I had in mind was general dues only.

Q. What would the special dues run, expressed in the same terms?

A. The special dues varied according to the various divisions and I have no clear recollection of the dues in the various divisions except that I do know that the minimum special dues collected in the Chicago division and in the Northeastern division was a quarter of a mill per barrel and the maximum special dues, which I recollect, was one and one-half mills per barrel collected in the Kansas City division.

Examiner Norwood: When you gave that $2,500, was that dues for a year?

The Witness: Dues for a year; yes, sir.

By Mr. Wooden:

Q. That was the minimum of the same shipper—the largest shipper—and the maximum would run seven times that?

A. If my figures are correct, yes—from a quarter of a mill to one and three-quarters mills per barrel.

Q. What proportion of the Institute dues would be rep-

resented or were represented by the dues of, say, the 12 largest shippers?

Mr. Hershberger: I object. I do not think that is material. I do not recall any allegation in the complaint
3153 whatsoever relating to the payment of dues in the Institute.

Examiner Norwood: I think he can answer. I do not think counsel will go into it very much further. Objection overruled.

The Witness: I am afraid I cannot answer that question because I do not have in my mind for even one year even the approximate figures for the 12 largest shippers. I could say that the largest single shipper would be something less than 10 percent of the whole.

By Mr. Wooden:

Q. And these special dues in the different districts, as I understand it, were on the basis of shipment into each district?

A. That is right.

Q. And the rate was the same whether the mill was located in the district or shipped into it on the outside?

A. That is right.

Q. I show you papers marked 595-A to F, inclusive, for identification. Will you accept them as authentic copies of what they purport to be; namely, a letter of yours to Mr. Conn, July 10, 1936, and other papers being enclosed therewith?

A. I do.

Mr. Wooden: I offer them for the record.

3154 Mr. Leisure: No objection.

(COM. EX. 595-A to F was offered and received in evidence.)

Q. Under the head of "Divisional activities" in the accompanying memorandum on Exhibit 595-D, there is a reference to the Freight Rate Bureau offices of the Institute, and then with reference to the State of New Mexico in District No. 10. The Chicago Freight Rate Bureau supplied freight rate books for New Mexico, did it?

A. Yes, they did.

Q. Then there is a reference here to the principal shipper in District No. 10. Who was that?

A. That was the Ideal Cement Company interests, their various plants.

Q. Was the suggestion made here that the principal

shipper in District No. 10 should supply the freight rate schedules through its own traffic department followed or adopted?

A. I do not think I was making that suggestion. I think I am stating that as a fact there, am I not?

Q. I did not say whose suggestion it was. It was not your suggestion, but the suggestion.

A. But the fact is, at any rate, that the Ideal Ce-
3155 ment Company traffic department issued its own schedule of freight rates in territories which it covered.

Q. Including New Mexico?

A. This New Mexico freight rate book was the last one taken on by the Chicago Bureau, the Chicago Freight Rate Bureau, and at that time our traffic manager investigated to see what freight rate books were issued, and that he could find in New Mexico, and the Ideal Cement Company had a very sketchy freight rate book of a part of New Mexico.

Q. Do I understand that the Ideal Company's freight rate service was then furnished to the other shippers into that territory?

A. Not so far as I know.

Q. I got the impression from a previous statement of yours that they did undertake—

A. (Interrupting): For their own account, Mr. Wooden.

Q. Oh, I see. That is, the service of the Institute for New Mexico continued, is that right?

A. Yes, it was instituted and then was supplied to all members of the Cement Institute who were interested in shipping into the State of New Mexico.

Q. And do I understand that the Ideal Company did not supply its service, or that you just don't know whether they did or not?

A. Well, I don't know whether they did or not.

3156 Q. Your freight rate bureaus—have they ever served districts 11 and 12?

A. No.

Q. What is the reason that districts 11 and 12 have not been included in the freight rate service?

A. I don't know other than that they have never signified their desire for that service, which would be an added cost to them so far as the Institute dues are concerned if that work was done by the Cement Institute.

Q. What does the reference in Exhibit 595-E to the much simplified freight rate problem in districts 11 and 12 mean? What does that mean?

A. While I had general charge of freight rate work in the Cement Institute, I want it understood that I am not a technician in freight rates. But I believe that all rates in that territory occur in one tariff, and, therefore, you do not have to search through a number of tariffs to find the applicable commercial freight rate or the lowest commercial freight rate, as you do in the eastern states or the southern states, I believe.

Q. Do you know whether or not it is true in that territory—Districts 11 and 12—that the same rate applies over very wide areas—something in the nature of a blanket rate covering larger areas?

A. I do not know.

3157 Q. Now, coming back a moment to the compendium that was previously described and put in evidence, just to shorten this, did you have a number of requests from members for a considerable number of copies of the compendium for distribution among their salesmen?

A. We had requests for additional copies of the compendium. I do not recall what the number was.

Q. And for the purpose I indicated in my question—for distribution among salesmen?

A. I believe some did indicate they wanted them for that purpose.

Q. As a sales manager, what would you say is the idea in distributing such a compilation among the salesmen?

A. Well, as a sales manager, I would not distribute that compilation to my salesmen.

Q. Other sales managers thought otherwise?

A. Yes.

3158 Mr. Wooden: I wish to offer at this time Exhibits previously marked for identification 136-1 to 136-24 inclusive, being the minutes of certain meetings of the Cement Institute, identified by Mr. Milwee as having been obtained, I believe, from Mr. McConnell.

Examiner Norwood: 1 to 24?

Mr. Wooden: Yes.

Examiner Norwood: Ot is it 64?

Mr. Wooden: 1 to 24. Others come along here in different order. They are arranged now chronologically.

(Discussion off the record.)

Examiner Norwood: Is there any objection to that last proffer?

Mr. Leisure: No obligation.

(COM. EX. 136-A to X was offered and received in evidence.)

Mr. Wooden: I also offer the minutes of the meeting of the members of the Institute dated January 8, 1930, marked 137-1 and 2 for identification, and identified by Mr. Milwee; also minutes of a members' meeting of April 8, 1930, marked for identification 137-3 to 16 inclusive, also identified by Mr. Milwee; also the minutes of the—

3159 Examiner Norwood: (Interposing.) I think we had better take these in as we offer them.

Mr. Wooden: I wanted to get those all together. That covers all that I have numbered and I have grouped the members' meetings together. I will have some trustee minutes following.

Examiner Norwood: Off the record, Mr. Reporter.

(Discussion off the record.)

Mr. Leisure: The financial statement attached to the minutes—is that a part of the minutes?

Mr. Wooden: I think it is referred to in the minutes and made a part of the minutes, I should say.

Mr. Leisure: This one (indicating) seems to be torn loose. Is that a part of the other or is it a separate exhibit?

Mr. Wooden: I think it is a part of that exhibit (indicating.)

Mr. Leisure: No objection.

COM. EX. 137-A to P was offered and received in evidence.)

3160 Mr. Wooden: I have here, Your Honor, a number of other papers covering minutes of the Institute or its members beginning with June 15, 1933, and marked Exhibit 596-A to blank, inclusive, then 597-A to blank, March 14, 1934; 598-A to blank, July 10, 1934; 599, September 26, 1935; Exhibit 600. December 11, 1935; 601, minutes of the members of the Bureau of Mines District No. 8; 602, a letter of Mr. Reiter's requesting notices of division meetings and minutes of division mettings; 603-A to blank, minutes of members June 19, 1936.

These papers have not been formally identified. I offer them provided that counsel is willing to concede their authenticity and waive the necessity of further identifica-

tion. Some of them bear Mr. Reiter's facsimile signiture on mimeograph copies, and others are photostats.

Mr. Zimmerman: May I ask also how did you get them?

Mr. Wooden: I think from various places.

Mr. Zimmerman: I think that would be material if you could state generally.

Mr. Wooden: Some of them were picked up on the Pacific Coast, I know. 596 was furnished by letter from Mr. Lundborg, 597 the same, 598, an original mimeograph
3161 stated to be obtained by Commission's representative Casko from Mr. Shelby, I think in California; 599 obtained by our Mr. Carmichael from Mr. Jennings. I don't know what company Mr. Jennings is with. Is that the Wabash?

The Witness: Wabash.

Mr. Wooden: 600 by Mr. Paulson from Mr. Reiter; 601 by Mr. Powers from Mr. Reiter; 602 also the same way; and 603 by Mr. Paulson from Mr. Reiter.

Mr. Leisure: Your Honor, subject to checking it as to correctness so that we may substitute any corrections that may appear to be necessary, we have no objection.

(COM. EX. 596-A to blank; 597-A to blank; 598-A to blank; 599-A to blank; 600, 601, 602, and 603-A to blank were offered and received in evidence.)

Mr. Wooden: I have here now, Your Honor, a
3162 collection of minutes of meetings of the board of trustees of the Institute. The minutes previously offered were minutes of meetings of members of the Institute or general meetings.

First, I want to offer the minutes of the meetings on January 24, 1930, already marked and identified by Mr. Milwee as 136-27 to 42; the minutes of the trustees of March 14, 1930, marked and identified by Mr. Milwee as 136-43 to 47; trustees' minutes of the meeting of May 26, 1930, marked and identified by Mr. Milwee as 136-48 to 49; trustees' meeting of September 4, 1930, already identified and marked as 136-51 to 56 inclusive; trustees' meeting of November 11, 1930, already marked and identified as 136-57 to 59 inclusive. I will offer those at this time.

Examiner Norwood: How about No. 50 coming in there? Did you eliminate that? You have 49 and the next one is 51.

Mr. Wooden: You understand, I am not offering all of the minutes that are available. Some were identified but

withdrawn because they did not appear necessary to be submitted.

Examiner Norwood: All right. I just wanted to call your attention to the fact that No. 50 was out.

Mr. Wooden: We have tried to eliminate duplica-
3163 tion. We have had different sets of the same minutes that were identified and then, at times, some seemed to contain matters of no relevancy or materiality.

I also offer trustees' minutes of May 12, 1931, marked and identified already as 136-63 and 64. I held that back because there was a gap in between in the the sub-numbers.

Examiner Norwood: Have you made your statement about the offer? Is there any objection to the last proffer?

Mr. Leisure: No objection.

(COM. EX. 136-AA to GGG, excepting No. 50, and KKK and LLL was offered and received in evidence.)

3164 Mr. Wooden: I have here a collection of minutes of the Board of Trustees not previously marked or identified, but which have now been given numbers.

604 is a report of a meeting of the Board of Trustees rather than the official minutes. The meeting was held March 14, 1930, obtained by Mr. MacIntyre from the files of Messers. Koch & Hogan.

605-A to blank, minutes of trustees, June 16, 1933.

606-A to blank, trustees' meeting, June 27 and June 28, 1933.

607-A to blank, trustees' meeting, July 26, 1933.

608-A to blank, trustees' meeting, August 15 and 16, 1933.

609-A to blank, recessed meeting from August 26, 1933.

610-A to blank, recessed meeting of the previous day, which I infer was August 23, but I am not sure.

611-A to blank, trustees' meeting, September 14 and 15, 1933.

612-A to blank, trustees' meeting, October 23, 1933.

613-A to blank, recessed meeting of the trustees, October 26, 1933.

614-A to blank, district trustees' minutes of meeting, November 23, 1933.

3165 615-A to blank, minutes of trustees of December 6, 1933.

616-A to blank, minutes of trustees, December 7, 1933.

617-A to blank, minutes of trustees, January 11, 1934.

618-A to blank, trustees' meeting, February 21, 1934.

619-A to blank, meeting of trustees, March 15, 1934.
620-A to blank, trustees' meeting, May 10, 1934.
621-A to blank, trustees' meeting, August 15, 1934.
622-A to blank, trustees' meeting, February 14, 1935.
623-A to blank, trustees' meeting, June 10, 1935.
624-A to blank, trustees' meeting, December 9, 1935.
625-A to blank trustees' meeting, May 19, 1936.
626-A to blank, trustees' meeting, September 10, 1936.
627-A to blank, trustees' meeting, December 17, 1936.
628-A to blank, trustees' meeting, May 18, 1937.

I offer those various papers at this time subject to such further identification or authentication as counsel thinks should be made.

3166 Mr. Leisure: Your Honor, as to the minutes that have just been offered by counsel for the Commission, we have no objection. There is, however, a photostat of one page of some kind of a document here that does not even show that the document is complete. 604 is the number. I do not know what it is and I object to it until some proper basis is laid for it being offered in evidence.

EVERETTE MacINTYRE, was recalled as a witness on behalf of the Commission, and testified further as follows:

Direct Examination by Mr. Wooden.

Q. Mr. MacIntyre, showing you Exhibit 604 for identification, will you tell us what you know about that paper?

A. The paper marked 604 for identification is a
3167 photostat of a paper which was furnished to me by Mr. H. C. Koch, John Neylan and Charles Hogan of the International Cement Corporation on July 8, 1931, in the offices of the International Cement Corporation, 342 Madison Avenue, New York. The paper they furnished me had previously been extracted by me or selected by me from their files in the examination of their files.

Q. It purports to be a meeting of the board of trustees of the Cement Institute on Friday, March 14th. There is some handwriting on the paper. Can you state anything about that, Mr. McIntyre? That is, it was on the paper before it was photostated?

A. The handwriting appearing on this photostat, of course, was on the original paper before the photostat was

made and part of which was file symbols as used by the International Cement Corporation in filing its papers in the various files. The other notations I do not feel that I am able to speak about. I do not feel that I am able to state what they are other than they are in the handwriting of the persons as they appeared on the original papers.

3168 Examiner Norwood: It appears on the face that it is a meeting of the board of trustees of the Cement Institut on Friday, March 14th, and it is dated March 18, 1930.

3169 Do you wish to testify it further by Mr. Reiter?

Mr. Wooden: I do not believe it can be done, in view of the date. What is the date? 1930?

Examiner Norwood: Yes.

Mr. Wooden: He was in the Chicago division at that time.

Examiner Norwood: What file was this?

The Witness: It is from the files of the International Cement Corporation. The International Cement Corporation changed its name to the Lone Star Cement Corporation and it is one of the respondents here.

Examiner Norwood: They furnished the papers to you?

The Witness: They furnished the papers to me and I had a photostat made of the originals and sent the originals back to them. This is a photostat.

3170 Examiner Norwood: What is the value of it? What is the basis for offering it?

Mr. Wooden: Well, it describes the subjects discussed, such as the checking of contracts, cancellation of contracts, the preparation of a sample contract form for guidance of the members, and a decision not to extend the Institute's operations to Texas until certain restrictions of a certain man had been complied with.

Examiner Norwood: I think that inasmuch as it is not in the Cement Institute file, I think you had better identify it by Mr. Reiter or somebody else.

Mr. Wooden: This is not offered strictly, Your Honor, as a document of the minutes of the meeting that is referred to in it, but a report on that meeting by a respondent company.

Mr. Leisure: There is no showing of that.

Examiner Norwood: By whom?

Mr. Wooden: The only thing that can be said on that

is that this was in the files of the respondent company, and there is a description of the meeting, the people who were present, and so on. The fact that it does not contain a signature, to my mind, is not at all conclusive that it should not be received. The fact that it came from the files of a respondent company and contained
3171 therein, I contend is sufficient for the reception of the paper.

Examiner Norwood: I do not think a signature is necessary, but somebody will have to show what it is.

The other exhibits, 605 to 628, inclusive, with the exception of 604, are received in evidence. 604 remains merely as marked for identification. We would like to know a little more about it.

(COM. EX. 605 to 628 inclusive were offered and received in evidence.)

Mr. Wooden: I have here a number of minutes of meetings of the code authority for the Cement Industry, which I have had marked for identification.

629-A to blank is a meeting of December 20 and 21, 1933.

630-A to blank is a meeting of the code authority, February 20, 1934.

631-A to blank is a meeting of the code authority, Friday, March 13, 1934.

632-A to blank is a meeting of the code authority, April 10, 11 and 12, 1934.

633-A to blank are statements on behalf of the industry submitted at an N. R. A. meeting, July 11, 1934, by Charles S. Conn, who I understand was president of the Institute.

3172 I offer those various papers at this time upon the assumption that their authenticity will not be questioned and that further identification will not be required.

Mr. Leisure: Your Honor, as to all of these minutes that are being offered, being minutes of the code authority, and they being in a sense Government records, we have no objection to them, but I notice there is included here a statement by Mr. Conn at an N. R. A. hearing—that is Exhibit 633. I submit that the respondents are not bound by a statement made by Mr. Conn at an N. R. A. hearing. I object to that as being incompetent, immaterial and irrelevant.

Mr. Wooden: I submit the respondents are bound by

any statement made at any time by one in the position of Mr. Conn, who was president of the Institute.

Examiner Norwood: That is identified as his statement, isn't it?

Mr. Leisure: There would have to be a showing, Your Honor, of the fact that it was made in pursuance of his authority, and it would have to be made as president of the Institute. Any statement that Mr. Conn might make is not binding on the respondents.

Examiner Norwood: Is his signature along with it there?

3173 Mr. Leisure: No, his signature is not on it. The signature is not on the paper, and I am addressing my objection not to the identification, because it is only a photostat—I do not raise that question.

Examiner Norwood: Do you question the reproduction of his signature?

Mr. Leisure: There is no signature and it is only a photostat. I am not objecting on that ground, but it does seem to me that material of this kind—in order not to encumber the record unduly, material of this kind which can not possibly be considered later as binding on these respondents, should not be received in evidence as we go along. As bearing upon what I have already said about there being some showing that he was acting on behalf of the Cement Institute, the very first sentence says that he is acting on behalf of the Code Authority.

Mr. Wooden: There is a showing here of who and what the Code Authority was and how it was constituted and elected, as the Cement Institute's tool and creature.

Examiner Norwood: I think it could be received for proper consideration.

Mr. Leisure: It is a quasi-judicial body, and it was approved by the President, Your Honor, so it does not seem to me that that is the kind of material that should 3174 be offered here without some showing that it is material, and relevant to the issues.

(COM. EX. 629-A to blank 633-A to blank inclusive were offered and received in evidence.)

3176 Washington, D. C.,
Thursday, February 10, 1938.

3177 Examiner Norwood: The hearing is convened at 10 o'clock a. m. in the Main Hearing Room of the Federal Trade Commission offices pursuant to adjournment of yesterday.

The reporter is making out for me an accurate list showing the number of pages of these exhibits that we are numbering A to blank. That may be read into the record later if you wish it, but it shall remain in my custody and be determinative of the number at any time.

Proceed, gentlemen.

Mr. Wooden: Your Honor, I would like first to complete the offering and introduction of the minutes on which I was engaged yesterday and to which papers the reporter had already assigned tentative numbers for identification.

First, I wish to offer mimeographed minutes of the meetings of the executive committee of the Institute—executive and one special committee: The executive committee minutes of July 6, 1933, and July 13, 1933, are marked respectively 634-A to E and 634-F to M, inclusive. The minutes of the special committee, dated August 19, 1936, have been marked 634-N to T, inclusive. I am offering these on the assumption that further identification will not be necessary. They are in the form of mimeographed papers and we can account for the source
3178 or origin of the papers and where we obtained them, if that becomes necessary.

Mr. Leisure: While we raise no question about the identification of these minutes, it does seem to me that there is some question as to the materiality and there should be some showing as to how these are admissible in evidence in these proceedings. Your Honor may not agree with counsel in his contention that they are material. I can not see at the moment how they are material and as to what they tend to prove in respect of the charges in the complaint.

I do not want to have unnecessary documents in the record unless they prove or tend to prove some issue.

Mr. Wooden: We will concede that there are many portions of these minutes which are not material, but the

question of separating those from the portions which are material seems to me an unnecessary task and it would be well to allow the minutes to go in as minutes for such portions as may be material.

Mr. Leisure: That is the point of my objection. It has not appeared yet that any portions are material. I do not see the necessity of encumbering the record with matter that is not show to be material in the case.

Examiner Norwood: It will be understood that
3179 in taking this case up and printing the record, the Trial Examiner may eliminate such portions of them as may be considered as withdrawn from evidence, in order to save a great deal of expense, or the Trial Examiner and counsel on both sides may agree to that.

Mr. Leisure: I understand that is the practice, Your Honor, but it does seem to me, if we are following any rules of evidence in the proceeding, there should be some showing as to materiality.

This is like offering an entire ledger for the purpose of getting in one figure. It should appear first that the figure is relevant before offering the ledger. Therefore, I shall object until there is a showing that anything in the minutes is relevant and material.

Mr. Wooden: I can take these minutes and show the portions that are relevant and material if that is necessary. I have already conceded that many portions are not material, and I should say many not relevant, but the separation of those relevant and material portions from the other portions, if seems to me, is an unnecessary requirement at this state of the proceeding.

Examiner Norwood: Where entire documents may be separated, I really think it should be done. If there is
3180 one meeting that does not touch upon the subjects here, why that should not be included just because it comes in between the dates of two relevant papers, but I assume that counsel has gone over that part of it.

Mr. Zimmerman: I believe the Commission has seen fit to promulgate a rule on this subject. Rule 19 applies to this exact situation and it does provide specifically that where, in a paper, just as counsel has outlined, there are relevant and irrelevant matters, contained in that same document, steps should be taken to segregate the relevant from the irrelevant matter.

Now that, I think, is a rule intended to safeguard the

record and to make an orderly concise record so far as possible and we ought to pay, perhaps, a little more attention to that rule than we have. I d not recall its having been mentioned before, but I think it should be applied.

Examiner Norwood: We can receive a paper for just one paragraph.

Mr. Zimmerman: And that is the way it should be done, if that is the only portion that is relevant and material.

Examiner Norwood: But in the minutes here the date and the name of the secretary and the other data there showing that the meeting was called and it was a
3181 regular meeting and showing the parties present, et cetera—all that is necessary information to render the paragraph what you really want to use, material.

Mr. Wooden: I do not see how it is possible for anyone to determine whether the names of those present are material at the time.

Mr. Leisure: We ought to know in advance of arguments, however. It should not be kept secret until counsel gets up to argue his case; otherwise we can not meet it.

Mr. Wooden: The briefs will take care of that.

Examiner Norwood: I think that appears from his examination of the witness yesterday.

Mr. Zimmerman: What about a little mercy on the Examiner? Must he be compelled to read tons of material, and perhaps be smothered in a whole bundle of chaff in order to discover perhaps here and there a grain of evidence? That is the very purpose of this rule—to winnow out and set out the things that are pertinent to the case.

Now, there should be, as far as I can see, only one exception to that. There may be times when one counsel or the other will attempt to offer a part of the whole and it then may be possible for counsel on the other side to insist that the whole be offered—

3182 Examiner Norwood: Yes.

Mr. Zimmerman: —because counsel who offers it vouches for it, but the rule was not intended to cover such a situation. It was intended clearly to imply that everybody agrees. But there is a lot of irrelevant and immaterial matter that should be excluded in these minutes.

3183 Mr. Wooden: That is not only true of the minutes, but many other documents that have already gone into the record.

Mr. Zimmerman: And we are just getting deeper and deeper into a morass, and I think we are going to get completely lost.

Mr. Wooden: It will take more time and cost more to everybody concerned to weed out and specify the particular portions that are excluded and included from the offer than to do what I am doing now.

Mr. Zimmerman: Well, maybe rule 19 was not ever any good; I don't know.

Examiner Norwood: Does the counsel for the Commission represent that there is some material matter in each one of the documents?

Mr. Wooden: Otherwise I would not offer them. I have weeded out entirely such entire minutes as to my mind do not contain relevant and material data.

Mr. Leisure: Now, surely your Honor cannot rule on just counsel's statement that there is some material evidence.

Examiner Norwood: We give weight to counsel's statement, counsel on both sides.

Mr. Leisure: Your Honor has a right to know what that is. I do not see how your Honor can rule without 3184 knowing what it is.

Examiner Norwood: Well, I have not ruled yet.

Mr. Wooden: The other minutes, of course, went in yesterday along this same line without an objection being made.

Mr. Zimmerman: I think we have been rather lax, then.

Examiner Norwood: They can make their objection at any time, and the fact that they did not make it before does not preclude them now.

Mr. Wooden: Oh, I am not questioning their right to make any objection at any time they like.

Mr. MacIntyre: I would like to make one statement off the record.

(Off the record.)

Mr. Zimmerman: Before you start examining that batch, Mr. Examiner, I would like to just interrupt long enough to read three or four lines from rule 19 of this Commission.

Examiner Norwood: Do you want this on the record?

Mr. Zimmerman: Yes, I would like my statement on the record.

Examiner Norwood: Well, you may have it, but it is not necessary to read the rule into the record.

(Off the record.)

3185 Mr. Wooden: By dint of a great deal of unnecessary labor and expense to everybody concerned, the other side as well as ourselves, we can meticiously conform to that rule, but the circumstances of this case are such it seems to me, that it is not intended to apply to such circumstances.

Examiner Norwood: I have examined those now, and I see probable relevancy of something in every one that has been offered thus far. I think we should give counsel the benefit of any possible doubt about it. I feel sure that each one of them contains matter that is relevant. Off the record.

(Discussion off the record.)

(COM. EX. 634-A to E, and 634-F to M and 634-N to T, was offered and received in evidence.)

Mr. Wooden: I now offer a paper marked for identification 635-A and B, consisting of a photostat of an original signed letter from G. E. Pearson, Vice president, Lone Star, to Charles L. Hogan, vice president of Lone Star,

3186 dated July 24, 1930. This photostat was obtained by Mr. MacIntyre from the files of Messrs. Koch and Hogan, and if formal identification is required, I am ready to give it.

Mr. Leisure: No objection.

(COM. EX. 635-A and B was offered and received in evidence.)

Mr. Wooden: This exhibit relates to a meeting of the Chicago division held July 22, 1930, and in connection with it, I now offer the minutes of that advisory committee meeting held on the same date as already marked and identified as Commission's Exhibit 137-17 to 137-22; those papers having been identified by Mr. Milwee when he appeared.

3188 The witness identified Com. Ex. 635 A and B as photostats of papers furnished to him by Mr. H. C. Koch, Mr. John Neylan and Mr. Charles Hogan, of International, New York City, on July 9, 1931, after he had selected the papers from their files. The signature and other handwriting, which is photographed on the photostat appeared on the originals at the time the originals were selected from the files of the informants named. Mr. Pearson was an officer of International at that time. Mr. Hogan

3189 was Executive Vice President of International.

Mr. Wooden: I renew the offer after the supplementary identification.

Mr. Zimmerman: And I renew my objections. I think they have in no wise been cured.

Examiner Norwood: Do you question the genuineness of the signature?

Mr. Zimmerman: Not at all. I say that there has been no proper foundation laid for the admission of this document into evidence that makes it in anywise pertinent, relevant or material to any issue in the case.

Mr. Wooden: What foundation is necessary other than it is a written statement of respondent's representatives?

Mr. Zimmerman: I do not want to be in anywise discourteous, but I do not think it would be at all gainful for us to enter into a discussion of that.

3190 Mr. Wooden: I included in my offer, Your Honor, the paper 137-17 to 22, inclusive, the advisory committee minutes of the same meeting referred to in Exhibit 635-A.

Mr. Leisure: We make the same objection to this offer, that we made to the last exhibit covering the minutes namely, that they are incompetent, irrelevant 3191 and immaterial, and on the further ground that no showing has been made that they are pertinent to any of the issues described in the pleadings.

Examiner Norwood: There is no objection to it on the ground of identification?

Mr. Leisure: No. As to being a copy of the minutes or anything of that sort, there is no objection.

(COM. EX. 137-Q to V, inclusive, was offered and received in evidence.)

3192 Mr. Wooden: I now offer minutes of the Committee on Plan for Sharing Available Business, dated April 12, 1934, marked Exhibit 636-A, and minutes of the same committee dated June 13, 1934, 636-B to D inclusive.

3193 Mr. Leisure: You Honor, the only thing I can do is to repeat my former objection.

Examiner Norwood: As to the materiality?

Mr. Leisure: Yes, that they are incompetent, immaterial and irrelevant, and no showing has been made which would allow them to be considered here, and I am referring to the fact that during this code period, this sort of thing was legal.

Mr. Wooden: I don't know about that. That may be a question.

Examiner Norwood: Yes, that is a question, too.

Mr. Leisure: There has been no showing that there has been anything in here that is not. Until there is some showing to that effect, I object to it. I just would like to call your Honor's attention to Article 6, the Plan for Sharing Available Business, in the code approved by the President: "The Board is hereby authorized to formulate the plan or plans within 30 days after the effective date of this code."

Examiner Norwood: That is an interesting question of law. You would not urge me to shut out the evidence and prevent you from ever having that tested, would you?

Mr. Leisure: I think that there should be some
3194 showing that this is material evidence. Certainly up to the Schechter case, this was good law.

Mr. Wooden: I think that is open to challenge.

(COM. EX. 636-A to D, inclusive, was offered and received in evidence.)

Mr. Wooden: I now offer minutes of the meetings of the members of Districts Nos. 1 and 2 of the Cement Institute as follows,—June 22, 1933, Exhibit 637-A to F; March 1, 1934, 637-G to J; September 12 1934, 637-K to Q; October 26, 1934, R to U; February 13, 1935, V to Y; March 25, 1935, Z to BB; February 27, 1936, CC to EE.

These are all photostats of documents obtained from various files, and we can account for them if there is any objection to their identity.

Mr. Leisure: We make the same objection to these exhibits.

Examiner Norwood: As to their relevancy?

Mr. Leisure: That they are incompetent, immaterial, and irrelevant, and no basis has been laid for showing that they prove or do not prove any of the allegations in the complaint.

Mr. Wooden: I might observe in that connection
3195 that I doubt if there is a single document in evidence in the case or a single document in evidence in almost any case as to which you might not point out a line in it or two lines in it that you could not say were incompetent, immaterial or irrelevant.

Mr. Zimmerman: Suppose it was the other way around, that in the documents there were only half a dozen lines that were material, what then?

Mr. Wooden: Would you say that wherever more than

half of it was relevant it should be admitted, and if more than half was irrelevant, that it should be excluded?

(COM. EX. 637-A to EE was offered and received in evidence.)

3196 Mr. Wooden: I hold here papers marked for identification 638-A to BB, inclusive, for identification. They are photostats of correspondence passing between the Institute's main office and California parties in reference to the formation of an organization on the Pacific Coast and the relations of such organization to the Institute, all beginning in June, 1936, and running to September, 1936. I understand that all those were photostats of documents obtained by Mr. Paulson from Mr. Reiter's files.

Mr. Pleisure: If Your Honor please, here is on old file of correspondence being offered as a group. Now, some of the respondents affected we do not represent and are not even here. For that reason, I think that the record should show what the exhibit is so that those gentlemen can intelligently follow the record. This is just a file of correspondence as if we brought in a drawerful of correspondence and offered it in evidence.

Mr. Wooden: On the point of whether he represents those people—the western people—the documents on their face show their membership in the Institute and the relations between the members on the coast and the Institute, including the relationships of the district trustee
3197 there to both organizations.

Mr. Leisure: But they can not follow the record if you just offer a whole drawerful of records without any designation—

Examiner Norwood: I think counsel has described them generally.

Mr. Leisure: I want to save all the time we can, but not to the extent of having the record unintelligible to people reading it.

Examiner Norwood: I think counsel for the Commission can give a short description better than anyone else, if you insist on that, which you undobtedly will.

Mr. Leisure: Any other exhibit that was offered would be offered in the proper way by saying "This is a letter" and stating its date, whom it is from, et cetera.

Examiner Norwood: I think he will do that.

Mr. Leisure: I do not think it is just a matter of convenience, Your Honor. I think it is a matter of correct

procedure. I do not see how Your Honor can pass on the relevancy and materiality of a whole file of correspondence. Some may be relevant and material and others not. It is not a matter of just convenience, but a matter of correct procedure.

Examiner Norwood: Does counsel prefer that counsel for the Commission read it, or do you prefer my
3198 taking the time to read it?

Mr. Leisure: I want the record to show, by describing them, just what is offered.

Examiner Norwood: He has described the dates.

Mr. Wooden: I have described the subject-matter.

Examiner Norwood: You would object to his giving the subject-matter of them before they are received in evidence?

Mr. Wooden: Do you raise any objection to their identification?

Mr. Leisure: I do not object because they are photostats, but I do reserve my objection as to their being relevant.

Mr. Wooden: I will renew the offer at a later time if that will help the situation any.

3199 Mr. Wooden: Some of Mr. Leisure's objections might be obviated by what I have in mind.

I understand that there are some people from a distance producing papers in response to the subpoenas duces tecum.

Examiner Norwood: Let us take this one I have received by registered mail from Mr. James A. Keller, 608 South Hill Street, Los Angeles, California, first. This is in compliance with a subpoena duces tecum and it is a bundle of papers which may be marked for identification "Commission's Exhibit 639-A to blank," and the reporter will keep them in his custody and report to me the number of pages as soon as practicable.

You may present the others now.

Mr. Leisure: May we have the covering letter with that?

Mr. Wooden: I understand his Honor to say yesterday that there was no covering letter.

Examiner Norwood: There may be a letter in the package.

Mr. Leisure: If there is a covering letter, I think it should appear in the record.

Mr. Wooden: Yes.

Examiner Norwood: Look in the package and see if there is a covering letter.

3200 I am informed there is.

Accompanying the papers marked 639-A to blank, the following letter:

"February 4, 1938.

"Honorable John W. Norwood, Examiner,
"Federal Trade Commission,
"815 Connecticut Avenue, N. W.,
"Washington, D. C.

"RE: The Cement Institute, Docket 3167.

"Honorable Sir:

"The enclosed document and papers are mailed to you pursuant to the subpoena of the Federal Trade Commission dated January 22, 1938, and received by this office on January 26, 1938.

"The enclosures are produced and surrendered to you on condition that none of the enclosures be surrendered to the Federal Trade Commission, its counsel, or employees until you have first examined the enclosures for the purpose of ascertaining their competency, relevancy, and materiality in the above proceding; and upon further condition that you turn over to the Federal Trade Commission, its counsel, or its employees, only such enclosures as are competent, relevant, and material in the above proceeding.

"When you have finished with the enclosures will
3201 you kindly return them to this office.

"Yours very truly,
"James A. Keller."

Statement of Documents Attached.

I.

Miscellaneous.

1. Pacific Coast Cement Institute Articles of Incorporation and By-Laws. (Pacific Coast Cement Institute incorporated September 28, 1936).
2. Membership and Activities of the Pacific Coast Cement Institute—June 1, 1937.
3. Copy of letter written by George H. Reiter to James A. Keller dated August 11, 1936, concerning the various activities of The Cement Institute.

4. Copy of letter written by S. W. Storey, Vice President of The Cement Institute, dated August 24, 1936, enclosing a copy of a report of the special committee on future activities of the Cement Institute to be considered at a meeting of the Board of Trustees to be held at the Blackstone Hotel, Chicago, on Thursday, September 10, 1936.

5. Comments on the proposed report by the special committee of The Cement Institute by the southern California manufacturers dated September 4, 1936.

6. Copy of Letter No. A-44 of The Cement Insti-
3202 tute dated September 12, 1936, written by George H. Reiter, Secretary of The Cement Institute, enclosing a copy of the minutes of the meting of the Board of Trustees held at the Blackstone Hotel, Chicago, Illinois, on September 10, 1936.

(At this meting opening of a branch office at Los Angeles of the Cement Institute was not authorized, and, hence, the incorporation of the Pacific Coast Cement Institute under date of September 28, 1936).

II.

Miscellaneous Communications Sent by The Cement Institute from Chicago, Illinois, or Washington, D. C., to Members of The Cement Institute.

7. Copy of letter from The Cement Institute, No. A-1, dated January 2, 1936, written to the members pertaining to land grant rates.

8. Copy of letter from The Cement Institute No. A-2, dated January 2, 1936, written to the members pertaining to land grant rates.

9. Copy of letter from The Cement Institute, No. A-12, dated March 30, 1936, Washington, D. C., pertaining to the hearing before the Senate Interstate Commerce Committee on the bill, S. 4055.

10. Statement of Blaine S. Smith presented at the hearing—March 30, 1936—Before Senate Interstate Commerce Committee on the bill, S. 4500.

3203 11. Copy of letter from The Cement Institute, No. A-13, dated Washington, D. C., March 31, 1936, covering transcript of testimony of Blaine S. Smith at the hearing at Washington on the Senate bill S. 4055.

12. Copy of letter from The Cement Institute, No. A-14,

dated Washington, D. C., March 31, 1936, covering transcript of testimony of B. F. Affleck and C. L. Hogan at the hearing at Washington on the Senate bill, S. 4055.

13. Copy of letter from The Cement Institute, No. A-16, dated Washington, D. C., April 1, 1936, covering transcript of testimony of F. M. Coogan and George F. Coffin at the hearing at Washington on the Senate bill, S. 4055.

14. Statement of George H. Reiter before the Senate Committee on Interstate Commerce on April 8, 1936, on the Senate bill S. 4055.

15. Copy of letter from The Cement Institute, No. A-19, dated Washington, D. C., April 9, 1936, covering transcript of testimony of Harold M. Scott at the hearing at Washington on the Senate bill S. 4055.

16. Statement of C. A. Brooke presented at the hearing before the Senate Interstate Commerce Committee on the Senate bill, S. 4055.

17. Copy of letter from The Cement Institute, No. A-24, dated April 28, 1936, pertaining to copies of letters from Blaine S. Smith to Senator Burton K. Wheeler con-
3204 taining information on the cost of transportation, and labor on foreign cement as against domestic cement.

III.

Miscellaneous Communications from the Pacific Coast Cement Institute to Their Members.

18. File copy of memorandum to the southern California sales managers dated December 28, 1936, advising that the Interstate Commerce Commission refused the American Railway Association's plea for the continuation of emergency charges expiring on December 31, 1936.

19. File copy of memorandum to the southern California sales managers dated January 20, 1937 furnishing a copy of the order of the Interstate Commerce Commission as it relates to the Supplements Nos. 1 and 4 of the Pacific Freight Tariff Bureau Tariff 88-P naming rates to Arizona points.

20. File copy of memorandum dated June 10, 1937, to the southern California sales managers advising of the complaint filed by the Attorney General of the States of Arizona regarding petroleum products covered by Docket 27735.

21. File copy of memorandum to southern California sales managers dated March 29, 1937, pertaining to proposed increase in freight rates to Arizona points from southern California points.

IV.

The Following File Copies of the Pacific Coast Ce-
3205 ment Institute, Numbers 22 to 66, Cover Various Memoranda Sent to Southern California Members and Relate to Commercial, Land Grant and Special Government Rates from Various Shipping Points to Destinations in California, Nevada, Arizona, etc., Which Were Furnished To The Pacific Coast Cement Institute Up to July 2, 1937, by the Southern Pacific, Union Pacific, and Atchison, Topeka & Santa Fe Railroad Companies.

(Where more than one letter is attached for a particular point it indicates that the railroads have published a special rate or that the commercial freight rates have been changed from time to time which would have the effect of changing the land-grant rate, and, in some cases the special rate, proportionately.)

22. File copy of memorandum dated February 3, 1937, mailed to the southern California members advising the approximate land grant and commercial freight rates from various mills to Knightson, Antioch, Martinez, Port Chicago, Port Costa, and Crockett.

23-A to D. File copies of letters to the southern California members advising the approximate land grand and also the special government as well as the commercial freight rates from various mills to Araby, Blaisdell, and Dome.

23-A. File copy of letter dated April 21, 1937.
3206 23-B. File copy of letter dated December 24, 1936.
23-C. File copy of letter dated December 22, 1936.
23-D. File copy of letter dated December 18, 1936.

24. File copy of letter dated January 13, 1937, mailed to the assistant to the Sales Manager of the Southwestern Portland Cement Company advising the cement rates quoted to the Los Angeles County Flood Control District account the San Gabriel Dam.

25. File copy of memorandum dated September 15, 1937, mailed to the southern California members advising

the approximate land grant and commercial freight rates to Banning, California, from various mills.

26-A and B.

26-A. File copy of memorandum mailed to A. D. Fargher advising the commercial and approximate land grant rates from various mills to Benson, Arizona, dated April 30, 1937.

26-B. File copy of memorandum to southern California members dated February 15, 1937, advising the commercial and approximate land grant rates from various mills to Benson, Tucson, and Safford, Arizona.

27. File copy of memorandum mailed to the Assistant Sales Manager of the California Portland Cement Company dated April 26, 1937, advising the commercial and approximate land grant rates from various mills to Boca, California.

3207 28. File copy of memorandum dated April 6, 1937, mailed to the southern California members advising of special government and land grant rates to Boulder City, Nevada.

29-A to C. File copies of letters to the southern California members advising the approximate land grant and commercial freight rates from various mills to Calexico, California.

29-A. File copy of letter dated March 19, 1937.

29-B. File copy of letter dated March 18, 1937.

29-C. File copy of letter dated December 11, 1936.

30. File copy of memorandum dated February 23, 1937, mailed to the southern California members advising the approximate land grant and commercial freight rates from various mills to Caliente, Nevada.

31. File copy of memorandum dated March 16, 1937, mailed to the southern California members advising the approximate land grant and commercial freight rates from various mills to Casa Grande, Arizona.

32. File copy of memorandum dated April 5, 1937, mailed to the Southern California members advising the approximate land grant and commercial fregiht rates from various mills to Chandler, Arizona.

33-A to B. File copies of memoranda mailed to the southern California members advising the approximate land grant and commercial freight rates from vari-

3208 ous mills to Clifton, Arizona.

33-A. File copy of memorandum dated February 19, 1937.

33-B. File copy of memorandum dated February 10, 1937.

34. File copy of memorandum dated March 22, 1937, mailed to the southern California members advising the approximate land grant and commercial freight rates from various mills to Douglas, Arizona.

35-A to C. File copies of letters mailed to the southern California members advising the approximate land grant and commercial freight rates from various mills to Earp, California.

35-A. Memorandum dated March 20, 1937, pertaining to special rates.

35-B. Letter dated March 15, 1937, pertaining to special and land grant rates.

35-C. Memorandum dated October 15, 1936, pertaining to special rates.

36. File copy of memorandum dated February 15, 1937, mailed to the southern California members advising the approximate land grant and commercial freight rates from various mills to Elko, Nevada.

37. File copy of memorandum dated March 8, 1937, mailed to the southern California members advising
3209 the approximate land grant and commercial freight rates from various mills to Flagstaff, Arizona.

38. File copy of memorandum dated March 29, 1937 mailed to the southern California members advising the approximate land grant and commercial freight rates from various mills to Fort Huachuca, Arizona.

39-A to D. File copies of memoranda mailed to the southern California members advising the approximate land grant and commercial freight rates from various mills to Friant, California.

39-A. Memorandum file copy dated May 14, 1937, to Assistant to the Sales Manager of the Southwestern Portland Cement Company.

39-B. File copy of memorandum dated February 4, 1937.

39-C. File copy of memorandum dated January 19, 1937.

39-D. File copy of memorandum dated October 7, 1936.

40. File copy of memorandum dated April 7, 1937, mailed to the southern California members advising the approximate land grant and commercial freight rates from various mills to Gallup, New Mexico.

41. File copy of letter dated May 10, 1937, mailed to the sales manager of the Riverside Cement Company advising the commercial and approximate land grant rates from various mills to Glendora, California.

3210 42-A and B. File copies of memoranda mailed to the southern California members advising the approximate land grant and commercial freight rates from various mills to Globe, Arizona.

42-A. File copy of memorandum dated January 18, 1937.

42-B. File copy of memorandum dated September 4, 1936.

43. File copy of memorandum dated May 4, 1937, mailed to the southern California members advising the approximate land grant and commercial freight rates from various mills to Grand Canyon, Arizona.

44. File copy of memorandum dated March 9, 1937, mailed to the southern California members advising the approximate land grant and commercial freight rates from various mills to Holbrook, Arizona.

45-A and B.

45-A. File copy of memorandum dated February 8, 1937, mailed to the southern California members advising the approximate land grant and commercial freight rates from various mills to Kennett, Keswick, and Redding, and Red Bluff.

45-B. File copy of memorandum dated June 23,
3211 1937, mailed to the southern California members advising the approximate land grant and commercial freight rates from various mills to Kennett, Keswick, Redding and Red Bluff, California.

46. File copy of memorandum dated April 24, 1937, mailed to the southern California members advising the approximate land grant and commercial freight rates from various mills to Knob, California.

47. File copy of memorandum dated June 3, 1937, mailed to the southern California members advising the approximate land grant and commercial freight rates from various mills to Lompoc, California.

48. File copy of memorandum dated January 11, 1937, mailed to the southern California members advising the approximate land grant and commercial freight rates from various mills to Lovelock, Nevada.

49. File copy of memorandum dated February 12, 1937,

mailed to the southern California members advising the approximate land grant and commercial freight rates from various mills to McNary, Arizona.

50-A to D. File copies of memoranda mailed to the southern California members advising the special government approximate land grant, and commercial freight rates from various mills to Mesa, Arizona.

50-A. File copy of memorandum dated January
3212 19, 1937.

50-B. File copy of memorandum dated January 13, 1937.

50-C. File copy of memorandum dated January 9, 1937.

50-D. File copy of memorandum dated November 19, 1936.

51. File copy of memorandum dated April 15, 1937, mailed to the southern California members advising the approximate land grant and commercial freight rates from various mills to Moapa, Nevada.

52. File copy of memorandum dated January 21, 1937, mailed to the southern California members advising the approximate land grant rate and commercial freight rates from various mills to Nogales, Arizona.

53. File copy of memorandum dated Januady 11, 1937, mailed to the southern California members advising the approximate land grant rate and commercial freight rates from various mills to Numana, Nevada.

54. File copy of memorandum dated April 24, 1937, mailed to the southern California members advising the approximate land grant and commercial freight rates from various mills to Ogilby, California.

55. File copy of memorandum dated March 6, 1937, mailed to the southern California members advising
3213 the approximate land grant and commercial freight rates from various mills to Parker, Arizona.

56-A. to H.

56-A. File copy of memorandum dated January 19, 1937, mailed to southern California members pertaining to the special government rate to Phoenix, Arizona.

56-B. File copy of memorandum dated January 13, 1937, mailed to southern California members pertaining to approximate land grant and commercial freight rates from various mills to Phoenix, Arizona.

56-C. File copy of memorandum dated December 23,

1936, mailed to southern California members advising the land grant rate to Phoenix, Arizona.

56-D. File copy of letter dated September 29, 1936, to the Traffic Manager of the Southwestern Portland Cement Company pertaining to the land grant rate to Phoenix, Arizona.

56-E. File copy of letter dated September 16, 1936, to James A. Keller from the Traffic Manager of the Southwestern Portland Cement Company pertaining to the land grant rate to Phoenix, Arizona.

56-F. File copy of letter dated September 11, 1936, to the Vice President and General Manager of the Southwestern Portland Cement Company pertaining to approximate land grant and commercial freight rates
3214 to Phoenix, Arizona.

56-G. File copy of letter dated September 9, 1936, to James A. Keller from the Vice President & General Manager of the Southwestern Portland Cement Company pertaining to commercial and land grant rates to Phoenix, Arizona.

56-H. File copy of memorandum to southern California members dated September 4, 1936, advising the approximate land grant and commercial freight rates from various mills to Phoenix, Arizona.

57-A and B. File copies of memoranda mailed to the southern California members advising the approximate land grant and commercial freight rates from various mills to Potholes, California.

57-A. File copy of memorandum dated March 19, 1937.

57-B. File copy of memorandum dated March 16, 1937.

58-A and B.

58-A. File copy of memorandum dated May 1, 1937 to Mr. A. D. Fargher advising the land grant rate from various mills to Prescott, Arizona.

58-B. File copy of memorandum dated February 18, 1937, to the Southern California members advising the approximate land grant rates from various mills to
3215 Prescott and Winslow, Arizona.

59. File copy of memorandum mailed to the southern California members dated February 16, 1937, advising the approximate land grant and commercial freight rates from various mills to Rodeo, New Mexico.

60-A and B.

60-A. File copy of memorandum dated April 30, 1937,

to Mr. A. D. Fargher advising the approximate land grant and commercial freight rate to Safford, Arizona, from various mills.

60-B. File copy of memorandum dated February 15, 1937, to the southern California mills advising the approximate land grant and commercial freight rates from various mills to Benson, Tucson, and Safford, Arizona.

61. File copy of memorandum dated March 17, 1937, to the southern California members advising the approximate land grant and commercial freight rates from various mill to San Carlos, Arizona.

62. File copy of memorandum dated February 8, 1937, mailed to the southern California members advising the approximate land grant and commercial freight rates from various mills to Somis, California.

63. File copy of memorandum dated June 25, 1937, mailed to the southern California members advising
3216 the approximate land grant and commercial freight rates from various mills to Tovrea, Arizona.

64-A and B. File copies of memoranda mailed to the Southern California members advising the approximate land grant and commercial freight rates from various mills to Tucson, Arizona.

64-A. File copy of memorandum dated January 20, 1937.

64-B. File copy of memorandum dated December 11, 1936.

65. File copy of meorandum dated February 16, 1937, mailed to the southern California members advising the approximate land grant and commercial freight rates from various mills to Willcox, Arizona.

66-A and B. File copies of memoranda mailed to the southern California members advising the approximate land grant and commercial freight rates from various mills to Yuma, Arizona.

66-A. File copy of memorandum dated January 16, 1937.

66-B. File copy of memorandum dated December 11, 1936.

3220. Examiner Norwood: I am looking at the papers in a general way, but anything that I do will not be controlled by any condition that a witness happens to attach to a paper when it comes in, which is not in accordance with the law and with the subpoena duces tecum. I am

looking the papers over generally, and I have not found anything among any of them—the ones that I have looked at—that I consider immaterial. But I do not feel bound by this witness' condition that he has attached here. If he would come in and find out what we are
3221 doing with them, I would permit him to withdraw his offer. I think that is clear.

3222 GORDON TONGUE, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

I am the secretary-treasurer and sales manager of Superior Portland Cement, Inc., located in Seattle, Washington. I have held the position of secretary about a month and sales manager and treasurer about 12 or 13 years.

Q. Did you receive a subpoena duces tecum from the Federal Trade Commission calling for the produc-
3223 tion of various papers specified therein?

A. I did.

Q. Will you state what steps you have taken to comply with the subpoena?

A. I have made as close a personal search of all of the files that we have in our possession and believe that I have brought with me all papers coming under the subpoena.

Q. Do you produce them here now as being in full compliance then with the subpoena as far as you were able to make compliance at all?

Mr. Little: At this time, if Your Honor please, I want to object to the witness here, Mr. Tongue, secretary of the Superior Portland Cement, Inc., being compelled to produce and deliver these documents which he has brought with him, upon the following grounds which I will state very briefly:

In the first place, the Superior Portland Cement, Inc., is not now and never has been engaged in interstate commerce. That is one respect in which I think Your Honor will find that the Superior Portland Cement, Inc., is in a different situation from many, in fact a great majority of the other respondents.

3225 Mr. Tongue, has the Superior Portland Cement, Inc., within your knowledge ever made sales of cement within the State of Oregon?

The Witness: We have in the last ten years shipped two carloads of cement into Oregon and sold them f. o. b. car Seattle.

3226 By Mr. Little:

Q. Mr. Tongue, have you ever made any shipments in interstate commerce as far as you know in 1937?

A. No.

Examiner Norwood: Answer my question that I 3227 asked a minute ago. These cars you sold f. o. b. factory in the State of Washington—did any of them afterwards move across State lines in interstate commerce?

The Witness: Yes, sir.

By Mr. Little:

Q. In 1936 were there any shipments in interstate commerce?

A. None.

Q. Did your company ever sell any cement for destination outside of the State of Washington in 1937?

A. None.

Mr. Little: I am not sure that you fully understood my question, but in any event, I ask you whether in 1937, 1936, 1935 or 1934, the Superior Company made any sales of cement or made any deliveries in Oregon or any other State?

3228 The Witness: In 1934 we made—

By Mr. Little:

Q. I just asked down to 1934.

A. In 1934 we made shipment of one carload. One of the railroads asked us for a price on cement f. o. b. Seattle and we so quoted that. A few weeks later the shipping instructions came to ship it into Oregon, which we did, but we invoiced it f. o. b. car, Seattle.

Q. Now, as to 1933, what is your answer?

A. In 1933 one of the dealers that we serve in Washington asked us for a price on a carload of cement—quick strength cement—to be shipped to Oregon. We told them we were not in interstate commerce and refused to make the shipment. It was a rush job that required this par-

ticular type of cement. We finally made the shipment, invoicing the car f. o. b. Seattle.

Q. Now, in the year 1932?

A. None.

Q. 1931?

A. None.

Q. 1930?

A. None.

Q. 1929?

A. None.

Q. 1928?

3229 A. None.

Mr. Little: I think that is going back a period of ten years and will probably be sufficient since the complaint only covers eight years.

I just want to add two other grounds, if Your Honor please, as objections to this witness, as the secretary of the Superior Company, being required to produce.

In the second place, the subpoena, in our opinion, is an unreasonable search and seizure, contrary to the Fifth Amendment of the Constitution. It is so broad that it does not give the Superior Company notice of which particular documents are required and notice of the relevancy of those documents. It results in a wholesale fishing expedition.

I have read from the record that other counsel have objected upon the point of this being a fishing expedition, so I will not take the time of Your Honor to go into any more detail on that point, but I do want to seriously urge that a procedure of this kind is a very burdensome invasion of the rights of any private corporation. I will not go into that any further at this time, but I want to repeat that point.

Now, in the third place, I want to add that I think that the proceedings leading up to the issuance
3230 of the subpoena were not proper and regular and it is necessary for a foundation to be laid and a showing to be made, first, as to the specific documents requested and, second, as to the relevancy of those documents in this hearing. I think it is a great mistake, in hearings of this kind, to proceed upon the theory that the rules of evidence and the rules of relevancy should be so far stretched that the constitutional rights of respondents are denied and impaired.

Granted that these hearings may be more informal than some court proceedings, nevertheless it is, in my opinion, an outrage that a corporation 3,000 miles away should be compelled to go to the time and expense of having a secretary there spend days and days going through thousands of documents to determine the relevancy of those documents to a very vague subpoena and I can not urge that too strongly, and at this time I would like to state that those, among the others, are the grounds upon which we resist this subpoena and the compulsion of attending here and being required to produce, and I would like Your Honor to rule on that at this time.

Examiner Norwood: That can only be determined by the District Court of the United States. In case respondent refuses to produce the testimony, the Commission
3231 proceeds for an order in the District Court and these questions that you have brought up here will then be considered, but it is not my province to consider them.

Of course the Commission is the issuing authority in the matter of subpoena duces tecum and other counsel have made their motion to be heard by the Commission as to their interpretation of the requirement.

Mr. Wooden: Your Honor, the motion is not that broad. The motion relates to certain particular classes of papers and nothing like the papers that have ben brought here.

Examiner Norwood: Some matters in connection with that have been the subject of their motion and counsel for this respondent may do the same thing, but I shall make no ruling as to whether those things are relevant or material or whether or not they comply with the subpoenas duces tecum or whether or not the subpoena duces tecum was correct in every particular or in any particular.

Mr. Little: Then Your Honor, I have noticed from reading the record, has, upon objections being made similar to the objections which I have made, stated that you would rule that, in order to comply with the subpoena, these must be produced and must be delivered to Your Honor
3232 and into the custody of Your Honor. I would like to know if that is the position of Your Honor on this question?

Examiner Norwood: I have made no such ruling.

Mr. Wooden: I would like to inquire whether your objection goes to the production of these papers in order that they may be inspected and copies made and the originals returned to you?

Mr. Little: Mr. Wooden, I can state the position concisely in this fashion: In the first place, I have raised an objection here for the purpose of the record and for the purpose of information of this Examiner, that in our opinion the subpoena is improper and invalid for the reasons which I have given. I am stating that for your information for the purpose of the record and for that reason we object to it and preserve all rights that we have at any future time in this proceeding.

In the second place, this witness has come here pursuant to the subpoena and has these documents in his posession, and only over our objection and under compulson are we prepared to deliver them and deliver them only into the custody of Your Honor for the purpose of Your Honor first determining whether under the circumstances of the objections which we have made particularly, these documents should be held or returned to the secretary and then
3233 if Your Honor should hold them or determine to retain custody of these papers as the production within the meaning of the subpoena, then I state on behalf of this witness that he is doing so upon the understanding that Your Honor shall retain the custody of these documents, because it is the contemplation of Section 9 of the Federal Trade Commission Act and as interpreted by the decisions of the courts, that they should only be produced to Your Honor and to no other person, and then that Your Honor should determine the relevancy of these documents such as they are, and under no condition turn over any of these papers to the counsel for the Federal Trade Commission, because having delivered them to Your Honor for Your Honor to pass upon the question of relevancy, there has been a full compliance over objection and under compulsion.

Mr. Wooden: Whatever right of inspection and copying may be conferred upon representatives of the Commission by Section 9, those rights are certainly not lessened but obviously increased, if that be possible, by the fact that the papers are brought in in response to subpoena, and I state for that record that if you want the papers back, you will get them without any retention beyond the necessities of inspection and copying.

Mr. Little: I appreciate what Mr. Wooden has
3234 said, but I want Your Honor and Mr. Wooden to realize and the record to show that it is our opinion that

when these papers are handed to Your Honor under this compulsion, that we are doing so on the ground that they are for Your Honor's inspection alone.

Examiner Norwood: Well, I will state to you what we are doing with these papers. We are receiving them and marking them for identification. I am retaining them in my custody until I can look over them, and then counsel on either side are privileged to give me a receipts for these papers and examine them. Now, that is what we are going to do with them, and if that does not suit counsel, he may do as he may deem advisable with regard to not proffering them at this time. If you proffer them to me, that is what will be done with them.

Mr. Little: Your Honor, I understand what Your Honor has stated and the position Your Honor has taken with reference to it.

Examiner Norwood: And you have your exception.

Mr. Little: I would like to have an exception to Your Honor's ruling.

Examiner Norwood: Yes.

3235 Q. Now, Mr. Tongue, I will ask you to identify the documents which you are now to deliver under the conditions which I have mentioned to the Examiner.

Mr. Wooden: Pardon me. I think at the time Mr. Little took the floor, I had a question pending as to whether Mr. Tongue proffered these papers as being in full compliance with the subpoena, and I do not believe the answer was given.

Examiner Norwood: I think the answer was in the affirmative, wasn't it?

The Witness: Yes.

Mr. Wooden: Well, it is now in the record.

Examiner Norwood: Do you want to ask any further questions, Mr. Little?

Mr. Little: I just wanted to identify the documents which are being handed over.

3236 The witness said he segregated these documents under the appropriate paragraphs of the subpoena as closely as he could. The file No. 4 containing 12 pages was marked for identification as Com. Ex. 640 A to L. "This" consists of a letter, dated August 10, 1936, Riverside to Mr. Lucas.

Mr. Little read the following documents for the purpose of saving time:

Letter of Mr. Baker of Riverside, dated August 5, 1936, to Mr. Lucas, and enclosure of three papers; letter of Mr. Lucas, dated July 26, 1936, to Mr. Baker. Those have been marked for identification 640-A to L.

3237 The witness said that in his opinion File No. 5 comes under paragraph 5 of the subpoena. That consists of two forms of a specific sales contract of Superior, Inc. Those documents were marked for identification as Com. Ex. 641-A and B.

File No. 6 indicates paragraph 6 of the subpoena. It consists of a copy of a letter from Superior, Inc. to Cement Institute, dated December 26, 1935; a mimeographed letter from Cement Institute, dated December 12, 1935 to all members of Institute; a mimeographed letter, dated December 19, 1935, from Cement Institute to all

3238 members of Institute. Those documents were marked for identification as Com. Ex. 642-A to C.

A file numbered 7 refers to paragraph 7 of the subpoena. It consists of a copy of letter from Mr. Perrow of Lehigh to Mr. Hughes of Lehigh, with a copy sent to "your" company, dated January 15, 1934; a letter, dated February 20, 1935, from Lehigh in the form of an announcement—two pages; a letter from "Superior Portland Cement" to its stockholders, dated January 1, 1934,

3239 containing an advertisement entitled "The Going Price." This file consists of 7 pages. The documents were marked for identification as Com. Ex. 643-A to G. File No. 8 refers to paragraph 8 of the subpoena. It consists of a copy of letter from Mr. Lucas, dated January 16, 1933, to Mr. Keller; a letter from Mr. Keller, dated January 12, 1933, to Mr. Lucas, enclosing a copy of letter, dated January 12, 1933, from Pacific to Honorable Samuel B. Hill;

3240 a copy of letter dated December 10, 1936, from Superior, Inc. to Cement Institute; a letter, dated December 21, 1936, from Cement Institute to "Mr. Tongue" as Treasurer; a copy of a letter, dated August 21, 1933, from Mr. Lucas as Trustee of District No. 12 to Mr. Gay; a letter, dated August 10, 1933, from Mr. Gay to Mr. Lucas as Trustee of the 12th District; a copy of letter from Mr. Lucas as Trustee of District No. 12 to Mr. Newlands, dated August 10; a letter dated August 8, 1933, from Mr. Newlands to Mr. Lucas, enclosing a copy of letter from Mr. Newlands to Mr. Lucas, dated August 8, 1933; a letter from Mr. Coogan, of Tariff Committee of Portland Ce-

ment Association, to Superior, Inc., dated March 8,
3241 1934. That is 12 pages altogether. Those documents were marked for identification as Com. Ex. 644-A to L. File No. 11 refers to paragraph 11 of the subpoena. It contains original letter, dated March 30, 1934, from Spokane to Mr. Lucas; a letter from Lehigh to Mr. Lucas as Trustee of District No. 12, dated March 30, 1934; a letter from Mr. Cameron of Olympic Portland Cement Company, Limited, to Mr. Lucas, dated March 29, 1934; a letter from Mr. Gay, dated March 28, 1934, to Mr. Lucas; a letter from Mr. Lucas as Trustee of District No. 12 to Mr. Cameron, dated March 26, 1934, enclosing a copy of letter from code authority; a letter, dated March 26, 1934, from Mr. Gay to
Mr. Lucas enclosing a copy of letter from certain
3242 companies to Mr. Rader, dated March "blank," 1934; a letter from Mr. Perrow as District Manager of Lehigh, dated January 3, 1934, to Mr. Lucas; a copy of letter from Mr. Lucas to Mr. Henderson, dated January 2, 1934; a copy of letter from Mr. Lucas to Mr. Perrow, dated January 2, 1934; a copy of letter from several companies addressed to Mr. Rader as "code authority," dated January 2, 1934; a copy of letter from the engineer of Seattle to Mr. Reitze, dated January 2, 1934. Those two letter were included because they were attached to another letter that was included within the subpoena. That makes twenty
3243 pages in all. Those documents were marked for identification as Com. Ex. 645-A to T.

3244 File No. 12 consists of two letters; one from Mr. Howard, of Building Material Dealers' Association of western Washington and dated Seattle, Washington, November 7, 1935, and addressed to "Superior Portland Cement Company," and the other a copy of letter from Mr. Howard to Northwestern, Olympic Portland Cement Company, and "Superior Portland Cement Company," dated October 28, 1935. Those are the only two letters in that file and consist of two pages. Those documents were marked for identification as Com. Ex. 646-A and B.

File No. P. L. No. 1 means Price List No. 1. The remainder of "these" consists of price lists. Approximately
3245 28 pages are included in No. 1. The witness has counted and double counted and is sure that is the number. That file of price lists containing twenty-eight pages was marked for identification as Com. Ex. 647-A to BB.

P. L. price lists No. 2 contains 57 pages. Those documents were marked for identification as Com. Ex. 648-A to EEE.

Price lists No. 3 contains 92 pages. Those documents were marked for identification as Com. Ex. 649-A to NNNN.

3246 Price list No. 4 contains 116 pages. Those documents were marked for identification as Com. Ex. 650-A to LLLLL.

File No. P. L. 5 contains 26 pages. Those documents were marked for indentification as Com. Ex. 651-A to Z.

File P. L. 6 contains 61 pages. Those documents were marked for identification as Com. Ex. 652-A to III.

File P. L. No. 9 contains 95 pages. Those documents ments were marked for identification as Com. Ex. 653-A to EEEEE.

File P. L. No. 8 contains 450 pages. Those documents were marked for identification as Com. Ex. 654-A to blank.

File P. L. No. 9 contains 95 pages Those documents were marked for identification as 655-A to QQQQ.

File P. L. 10 contains 18 pages. Those documents
3248 were marked for identification as Com. Ex. 656-A to R.

File P. L. 11 contains 14 pages. Those documents were marked for identification as Com. Ex. 657-A to N.

The witness said that comprises all of the files within the meaning of the subpeona so far as he knows.

3248 *Cross-Examination by Mr. Wooden.*

Q. I have just one or two questions while you are here, Mr. Tongue, suggested by Mr. Little's examination. Have you, from time to time, received inquiries from prospective purchaser in Oregon asking you to sell them?

3249 A. Yes, I think we have.

Q. And have you made it a policy to decline in such cases?

A. Yes, sir; with the exception of the two noted.

Q. Even declining to sell f. o. b. mill and allow the purchaser to take it where he will?

A. Yes, sir.

Examiner Norwood: Have you submitted bids to out-of-state concerns for cement used in those states, but to be sold by you f. o. b. mill?

The Witness: No, sir.

3250 A. H. CANVIN, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

I am secretary of the Pacific Portland Cement Company whose office is at 111 Sutter Street, San Francisco, California, and I have occupied that position since
3251 March, 1931. I have nothing whatever to do with the sales policy of the company.

Q. Do you have anything to do with the sales policy of the company?

A. None whatever.

Q. Did you receive, as secretary of the company, a subpoena duces tecum from the Federal Trade Commission?

A. I did. It is right here (exhibiting).

Q. Will you state what steps you have taken to comply with it?

A. I have gone through the files and selected out of them everything pertaining to the items mentioned in the subpoena.

Q. Have you brought the selections here which you made in that way?

A. I have.

Q. Do you produce them as being in full compliance with the subpoena or only as partial compliance?

A. In compliance with this stipulation. Under the subpoena duces tecum served in this case on me as secretary of the Pacific Portland Cement Company and as such secretary, I am producing certain papers from the files of the company. To the best of my knowledge they are all of the papers in those files or in the possession of the company or of me as its secretary and called for by the subpoena.

These papers, pursuant to the subpoena, are produced for the Examiner and for his inspection alone unless
3252 and until he shall, as and when the matter may be lawfully and properly presented to him, determine whether or not they or any of them, are competent, relevant and material to the issues in this case.

They are as follows:—

3259 The witness identified "This (exhibiting)" as the first letter—August 24. It is in the record but no number given it. The letter was marked for identification as Com. Ex. 658A and B; another letter from Cement Institute, dated July 15, 1933, to Pacific Coast Mills signed by Charles F. Conn, president. It is in three parts. The document was marked for identification as Com. Ex.
3260 659A to C; another letter, dated July 21, 1933, to the president of member companies, signed by Charles L. Hogan. It is in three parts. The document was marked for identification as Com. Ex. 660A to C; another letter from Cement Institute, dated May 21, 1934, to members, signed by Lundborg, one sheet. That document was marked for identification as Com. Ex. 661; another letter dated July 5, 1934, addressed to R. B.
3261 Henderson, president, signed by B. F. Affleck. Two parts. That document was marked for identification as Com. Ex. 662A and B; another letter dated April 4, addressed to R. B. Henderson, signed by B. F. Affleck, president—two parts. That document was marked for identification as Com. Ex. 663A and B; another letter dated August 3, 1933, to all members, signed by Charles F. Conn, president, one part. That document was marked for identification as Com. Ex. 664; another letter dated November 14, 1935, a general letter on Pacific sales, signed by "H." W. Storey, chairman, one part. That document was marked for identification as Com. Ex. 665; another letter dated July 3, 1933, to Pacific Coast mills, signed by George
3262 F. Coffin and Charles L. Hogan, committee. It is in three parts. That document was marked for identification as Com. Ex. 666A to C; minutes of the executive committee of the Cement Institute, dated July 6, 1933, in five parts. That document was marked for identification as Com. Ex. 667A to E; another letter dated December 19, 1935, regarding land grant rates, to members of Institute, signed by George H. Reiter, general manager, one part. That document was marked for identification as Com. Ex. 668; minutes of the executive committee, dated July 18, 1933, in eight parts. That document was marked for identification as Com. Ex. 669A to H; letter dated June 11,
3263 1937, executive letter No. A-68 to all members of Institute, signed by Inez M. Ihle, in five parts. That document was marked for identification as Com. Ex. 670A to E; another letter dated June 13, 1935, to all members

of the industry, signed by George F. Coffin, president, in three parts. That document was marked for identification as Com. Ex. 671A to C; another letter dated December 17, 1935, regarding government purchases, signed by George H. Reiter, general manager, in two parts. That document was marked for identification as Com. Ex. 672A and B; copy of a telegram dated November 27, 1935, to Captain H. C. Collins, Assistant director of Procurement, Treasury Department, signed by George H. Reiter, general manager,
one part. That document was marked for identifica-
3264 tion as Com. Ex. 673; another letter dated December
14, 1935, regarding R.F.C. loans, signed by George H. Reiter, general manager, one part. That telegram was marked for identification as Com. Ex. 674; another letter dated October 8, 1935, to all members of Institute, signed
by George F. Coffin, one part. That letter was marked
3265 for identification as Com. Ex. 675; letter dated Jan-
uary 28, 1937, "Land Grant Rate service discontinued", signed by George H. Reiter, one part. That document was marked for identification as Com. Ex. 676; another letter dated December 19, 1935, on land grant rates, signed by George H. Reiter, one part. That document was marked for identification as Com. Ex. 677; letter dated January 17, 1936, addressed to several cement companies, signed by George H. Reiter, one part. That document was marked for identification as Com. Ex. 678; letter of December 12, 1935, on land grant rates, signed by George H.
Reiter, one part. That letter was marked for identifi-
3266 cation as Com. Ex. 679; letter dated January 2, 1936,
land grant rates, signed by George H. Reiter, four parts. That document was marked for identification as Com. Ex. 680A to D; another schedule from Cement Institute on the subject of land grant rates on cement to New Mexico, and so forth, in four parts. That document was marked for identification as Com. Ex. 681A to D; the same thing for the State of Arizona, in three parts. That document was marked for identification as Com. Ex. 682A to C; letter addressed to Cement Institute, attention Mr. George
"H." Coffin, and Charles L. Hogan, from the presi-
3267 dent of Yosemite, two parts. That document was
marked for identification as Com. Ex. 683A and B; letter dated February 6, 1934, addressed to S. W. Storey, and signed by Hawkeye, by C. B. Condon, in three parts. That document was marked for identification Com. Ex. 684A to C; letter dated February 6, 1934, addressed to S.

W. Storey, signed by Hawkeye, three parts. That document was marked for identification as Com. Ex. 685A to C; letter dated February 6, 1934, in three parts, "same parties". That document was marked for identification
3268 as Com. Ex. 686A to C; another letter dated February 6, 1934, "to the same party", in three parts. That document was marked for identification as Com. Ex. 687A to C; letter dated July 17, 1934, to R. B. Henderson, president, signed by George "B" Coffin, written on the Nazareth Cement Company letterhead, one part. That document was marked for identification as Com. Ex. 688; letter from Cement Institute dated December 14, 1933, to C. B. Condon, General Manager, signed H. C. Lundborg, in one part. That document was marked for identification as Com. Ex. 689; minutes of recessed meeting of August 15 and 16, Washington, D. C., on August 23, 1933, in eight parts.
3269 That document was marked for identification as Com. Ex. 690A to H; recessed meeting of the board of trustees, October 26, 1933, at Washington, D. C., in three parts. That document was marked for identification as Com. Ex. 691A to C; minutes of board of trustees of Cement Institute, dated December 7, 1933, in four parts. That document was marked for identification as Com. Ex. 692A to D; letter dated March 1, 1934, to members of the industry, signed by C. F. Conn, President, one part. That document was marked for identification as Com. Ex. 693; "Minutes
3270 of Members of the Industry, in four parts". That document was marked for identification as Com. Ex. 694A to D; Cement Institute again, April 20, 1934, to all members of the industry, signed by H. "L." Lundborg, one part. That document was marked for identification as Com. Ex. 695; map of cement company capacities, and so forth, relative to the Mallory plan. That document was marked for identification as Com. Ex. 696; the Mallory plan, a plan for sharing available business, addressed to quite a number of the cement companies; "I won't read them all". It is in eighteen parts. That document
3271 was marked for identification as Com. Ex. 697A to R; "Another one of the same thing, eighteen parts." That document was marked for identification as Com. Ex. 698A to R; minutes of special meeting of Institute, June 27 and 28, 1933, in ten parts. That document was marked for identification as Com. Ex. 699A to J; minutes of members of District No. 11, Cement Institute, held at St. Fran-

cis Hotel, San Francisco, California, March 8, 1934, in three parts. That document was marked for identification as
Com. Ex. 700A to C; minutes of special meeting held
3272 July 26, 1933, in seven parts. That document was marked for identification as Com. Ex. 701A to G; telegram, dated March 14, 1934, to J. McCarthy, Pacific, signed by Burnett. It has an attachment to it and is in two parts. That document was marked for identification as Com. Ex. 702A and B; another telegram, dated March 13, 1934, to Pacific, signed by W. A. Davis for the committee; in one part. That document was marked for identification as Com. Ex. 703; letter dated June 28, 1934, to R. B. Henderson, president, signed by George F. Coffin; one part. That document was marked for identification as Com. Ex. 704; telegram to Gardner A. Beckett, care of River-
3273 side, signed by John Treanor, which happened to be in "our file". It is on sharing available business. That document was marked for identification as Com. Ex. 705; letter from Calaveras, signed by William Wallace Mein, to various presidents of the four companies in San Francisco, Robert H. Henderson, George Cameron, Emory Wishon and W. H. George; in two parts. That document was marked for identification as Com. Ex. 706A and B; mimeographed letter from Calaveras to all northern California dealers, dated July 8, 1935, which happened to be in "our files". That document was marked for identi-
3274 fication as Com. Ex. 707; price lists from Superior Portland Cement Company—"I won't attempt to read them all"—in 11 parts. That document was marked for identification as Com. Ex. 708A to K; price lists from Riverside, covering the period of the subpoena. There are quite a number there. "I think you can just throw them all in, can't you?" Those documents were marked for identification as Com. Ex. 709A to blank; those are Riverside. "And I have the same thing for the Santa Cruz Portland Cement Company." Those documents were marked for identification as Com. Ex. 710A to blank; "The same
3275 thing for the Yosemite Portland Cement Company". Those documents were marked for identification as Com. Ex. 711A to blank; "The same thing for the Southwestern Portland Cement Company". Those documents were marked for identification as Com. Ex. 712A to blank; "The same thing for the Spokane Portland Cement Company". Those documents were marked for identification as

Com. Ex. 713A to blank; "Three Forks Portland Cement Company, the same". Those documents were marked for identification as Com. Ex. 714A to blank; "Union
3276 Portland Cement Company, the same period". Those documents were marked for identfication as Com. Ex. 715A to blank.

3277 Mr. Ruggles: May the record show that the wit- as discharged, your Honor?

Mr. Wooden: I have just one question.

By Mr. Wooden:

Q. Referring to the price lists which you produced, did you produce any which the Pacific Company had sent to other companies?

A. No, sir.

Q. Those were all the lists which the Pacific Company had received from other companies?

A. I do not know. They were in our files. How they got there I do not know. A whole raft of them are old as you will see, if you will look at them.

Q. Are you connected with the sales policy or do you have anything to do with the administration of sales of the company?

A. None whatever.

Q. In considering the matter of the price lists, which I believe the subpoena called for, as it may have been distributed by your company to others—your own price lists —did you produce any of such?

A. No, sir; as far as I can find, the company does not distribute any price lists to the trade. We do not have a printed price list.

By Mr. MacIntyre:

3278 Q. Mr. Canvin, are the price lists which you have submitted, in response to item 13 of the subpoena, copy of which I show you?

A. The only thing that I know is that I brought the price lists that were in our files from the various companies.

Q. In response to item 13 of the subpoena?

A. I do not know which one it was.

Q. That is the only one in the subpoena calling for price lists. You produced these in response to item 13?

A. Yes, sir.

Q. I would like to read item 13 into the record. "Also

produce and deliver all price lists, including the lists of basing point prices received from or distributed to the manufacturers of Portland cement."

The price lists you have submitted in response to that item?

A. Yes.

By Mr. Ruggles:

Q. Have you any knowledge, Mr. Canvin, that those prices were received from any one of the companies whose price lists have been introduced in evidence?

A. I do not know how they were received. I found them in the files. I went through the files, and those are the price lists I found.

Examiner Norwood: Were they received in due
3279 course of business?

The Witness: I do not know how they came in—whether our salesmen brought them in or by mail or delivered or what.

3281 EVERETTE MacINTYRE, was recalled as a witness and testified further as follows:

Direct Examination by Mr. Wooden.

Q. Mr. MacIntyre, referring to exhibit for identification 604, which you identified, I believe, this morning—or was it yesterday? I have forgotten—being a sheet which did not show a completed document, I am now showing you a sheet which is marked or headed "No. 2" at the top and will ask you if the sheet I am now handing you has any relation to the paper marked 604 for identification?

A. It does. It appears to be the second page of the document which was referred to yesterday and identified as Exhibit 604.

3284 Q. I call your attention to numbering machine numbers "26" and "27" at the bottom of those respective pages. When were those numbers placed on there?

A. At the time the papers were photostated in the offices of the Federal Trade Commission, by Bates stamping machine, a package of papers being numbered from

1, that is on top, consecutively down to the bottom of the stack. These papers were so numbered before photostating took place. On the one marked "604" appears the Bates stamping "26", and on the second page we have been talking about appears the number "27" placed on the two before photostating was made.

Q. Does the authorship of the document appear when you consider the second page?

A. Considering all of the circumstances as I have stated them, the second page appears to have been a part of the whole as written by Charles L. Hogan, vice president of the International Cement Corporation, and that statement is in turn predicated upon the showing at the bottom of page 2 of the words "Vice President", and over in the left hand corner, are the initials "CLH:BS", those being Mr. Hogan's initians, and the paper having been taken from his file on the date indicated.

Mr. Wooden: I ask that the two papers now be marked 604-A and B, and I offer them at this time.

3287 Examiner Norwood: The paper heretofore marked 604 for identification and the paper just identified by the witness are received in evidence as Commis-
3288 sion's Exhibit 604-A and B.

(COM. EX. 604-A and B was offered and received in evidence.)

GEORGE H. REITER was recalled as a witness for the Commission and having been previously duly sworn, was examined and testified further as follows:

3289 *Direct Examination by Mr. Wooden.*

Q. Showing you, Mr. Reiter, papers marked 638-A to BB for identification, will you glance them over sufficiently to state whether or not they are authentic reproductions of correspondence between you and certain parties in Callfornia with regard to the proposed establishment of a divisional office in that State?

3290 The Witness: I believe, Mr. Wooden, you asked the question if these letters which I have before me are copies of letters pertaining to the formation of the Pacific Coast Cement Institute or a question of that kind.

By Mr. Wooden:

Q. Yes.

A. They do, except these papers numbered 638-R, 638-S, and 638-T. The first two, however, are a letter from James A. Keller to me, as general manager of the Cement Institute, dated September 8, and my reply dated September 9, but they do not in any part relate to the formation of that Pacific Coast Institute.

Q. Within the period covered by the other material there, it does relate strictly to that?

A. That is right.

Mr. Wooden: With the witness' explanation as to those three papers, I nevertheless wish to keep them in the exhibit as now numbered, because they come within the same period and I think it might be said they, at least relate to it.

Examiner Norwood: The record shows their lettering.

Mr. Wooden: Yes. So, before I can ask the witness any questions about any of these papers, I shall have to repeat the offer which I made this morning and I
3291 now do so.

3293 Q. Mr. Reiter, was there an organization formed in California along in the late summer of 1936, composed of the cement mills in that locality?

Examiner Norwood: Answer from your own knowledge.

The Witness: I was advised by correspondence that—

Mr. Leisure: (Interposing) Then I object to it, your Honor, as hearsay.

Examiner Norwood: Objection overruled. That was in the due course of business, was it, as secretary?

The Witness: Well, I was general manager—yes, sir.

Examiner Norwood: This organization had tran-
3294 sactions with your Cement Institute or was a part of it?

The Witness: I had correspondence with certain individuals on the West Coast regarding this matter.

Examiner Norwood: Objection overruled.

The Witness: Now, what is the question, please?

By Mr. Wooden:

Q. Was there an organization formed in the late summer of 1936 among cement mills in California as to which organization some question aros as to its relation to the Institute?

A. Yes, there was.

Q. Was there some question as to whether it should be recognized as a division of the Institute?

A. The members of that organization tendered it, the organization, as a divisional office of the Cement Institute, and the tender was refused.

Q. Before it was refused, can you say whether or not they put out letterheads showing that they were the southern California division of the Institute?

A. I am not sure.

3298 Examiner Norwood: Certainly it will not be considered against the Institute unless it is connected up. As for these other respondents, that is another matter. I think the complaint is broad enough to permit testimony with regard to these individual respondents and what they did under any sort of an organization.

Mr. Leisure: Does that mean, your Honor, that anything these men did, for instance, joining the chamber of commerce in their local cities, would be evidence in this case, because it seems to me that is where it leads to?

Examiner Norwood: If relevant.

3299 Q. Referring to Exhibit 638-M for identification, a letter addressed to you, does that refresh your recollection as to whether the organization in California put out a letterhead showing it to be a division of the Cement Institute?

Mr. Zimmerman: The witness stated that he did 3300 not lack recollection, but lacked knowledge.

The Witness: This is a typed letterhead of the Cement Institute of Southern California—a division.

By Mr. Wooden:

Q. Will you state whether or not, in August, 1936, you wrote the manager of the Institute at Kansas City to the effect that the Southern California members had established a divisional office of the Cement Institute?

A. I noticed that letter in the file and that refreshes my recollection that I did.

Q. Was the organization in Southern California promoted by the District trustee of the Institute for that district?

Mr. Leisure: If the witness knows of his own knowledge, I have no objection, but I object to hearsay testimony.

The Witness: I do not know how that was promoted or who promoted it.

By Mr. Wooden:

Q. Was Mr. Duque the trustee for that district?

A. Mr. Duque was, yes—trustee for District No. 11.

Q. Will you look at Exhibit 638-B, for identification, and then say whether or not Mr. Duque was seeking your advice as for the formation of a local organization there?

A. I did get a letter marked 638-B and C, signed by Mr. Duque as trustee, stating that the four Southern
3301 California cement companies desired to establish a division office of the Cement Institute and then describing the activities that they wanted to conduct.

Q. Did you, as general manager of the Cement Institute, supply the local organization in California with statistical data or information collected by the Institute?

A. Yes, and I would like to say that I had made a trip out to the West Coast in the spring—early spring—of 1936 and visited the West Coast members of the Cement Institute and told them of the activities of the Cement Institute, including the activities of the divisions then organized and sometime later the members in Southern California evidently decided that they wanted a divisional office of the Cement Institute. I assumed that it would be accepted by the board of trustees and, therefore, in the interim, until the board of trustees met to consider the matter, I did give them such information as I had on the conduct of the other offices for their information.

Q. Did a representative of the Southern California mills appear before the board of trustees of the Institute to present the matter of the proposed organization out there?

A. As I recollect it, Mr. Duque, himself, appeared.

3302 By Mr. Wooden:

Q. Was what was first known as a division of the Institute there—did they then change its name to the Pacific Coast Cement Institute?

A. That is its present name.

Q. You made a point of the fact that the letterhead on Exhibit 638-M, was a typed letterhead. I show you 638-R and 638-U and ask you if those do not appear to be printed letterheads?

A. That is right. They show a printed letterhead of the same kind.

Q. What was the reason that it was decided not to have the Southern California group constitute a division of the Institute?

A. By the time of the next meeting of the board of trustees, which was the first time this matter could be acted upon, the board had under consideration and either at that meeting or at a later time, did decide to do away with other divisional offices and, having that matter under consideration, or having decided to do away with those other offices, they felt it was inconsistent to accept this office on the West Coast as a division of the Cement Institute.

Q. Did you provide the office of the local organization on the Pacific Coast with the same material that you provided members of the Institute?

3303 A. I recollect that we provided them with samples of various forms for reporting, which were used in the Chicago division of the Cement Institute, and then later they wanted a supply of these forms and the Chicago divisional office sent them a supply and charged them for them, of course.

Q. Did you provide them with letters which were sent to trustees?

A. I think for a time—I am sure for a time—that we put them on the general mailing list or the mailing list for general letters of the Cement Institute, just as we had other divisional offices of the Cement Institute on those general mailing lists.

3304 Q. Were there some letters to trustees only which were beyond the power of your office to provide the local organization in California?

A. I so considered it. There were letters which went to trustees only and not the general membership, and I felt that it would be improper to sent such letters to Mr. Keller.

Q. Who was the author of such letters?

A. Well, there would be such things as financial statements which had been approved by the board of trustees or had been tendered to the board of trustees, and probably minutes of the trustees' meetings themselves.

3305 Q. Were they letters of which you were the author?

A. They probably had a letter of transmittal to the trustees from me as secretary. Such as the financial statements, Mr. Wooden, is what I have in mind.

Mr. Wooden: Your Honor, I renew my offer of these papers at this time.

3306 Mr. Wooden: There is no question about the identification. It is only a question of the general objection on competency, relevancy and materiality.

Examiner Norwood: Can you leave those open until tomorrow, conveniently?

Mr. Wooden: I will forego pressing the offer as a whole, and for the time being content myself with offering 638-O and P, which will enable a quick ruling.

Mr. Zimmerman: And the record will show a renewal of the objections heretofore made to this line of testimony as being applicable to these particular exhibits?

Examiner Norwood: Yes. Will you let me see the letters you are offering, Mr. Wooden?

(Mr. Wooden hands papers to the Examiner.)

Examiner Norwood: This is a letter you wrote in the due course of business as general manager?

The Witness: Yes, sir.

Examiner Norwood: Received as marked.

(COM. EX. 638-O and P was offered and received in evidence.)

3307 Q. Now, Mr. Reiter, in this communication you informed Mr. Keller as follows: "The only mail matter of general interest or of special interest to District No. 11 which you will not receive from this office is that which has a restricted distribution beyond my control, such as letters which are sent to trustees only." Is your explanation of that after reading that statement, the same as it was before?

A. Yes. I don't remember all letters that might be sent to trustees only. I simply attempted to name one or two which I believe were sent only to trustees, namely the financial statements and the list of disbursements of the Cement Institute and the minutes of the board meetings.

Q. Have you ever known of letters to trustees sent by other officers or th organization, such as the president?

A. Oh, yes.

Q. Are there such letters sent to trustees only by the president of the Institute?

A. Well, specifically I do not know. I see no reason why the president should not at times have occasion to write to trustees, members of his board.

Q. Of course, you did not have any control or power to send anybody any such communications?

A. Not unless the president's copy was sent to me
3308 for that purpose.

Q. Were copies of any such letters to the trustees from the president sent to you for your information?

A. They were.

Q. And what did you do with them?

A. Well, it would depend upon the nature of the letter and the nature of my instructions.

Q. Was that the situation during the time you were in charge of the Chicago division as well as later when you were general manager of the Institute?

A. I know that during my latter period as manager of the Chicago division from August, 1933, until June, 1934, I had some letters and copies of letters from the president of the Cement Institute.

Q. To trustees?

A. I don't recollect whether I did or not. I imagine I would get copies of some such letters.

Q. Did you keep them in your general files?

A. Yes.

Mr. Wooden: Your Honor, at this time before taking up another line of inquiry, I should like to direct your attention to Exhibit 608-L, a portion of the minutes of the board of trustees, August 15 and 16, 1933, in which in passing on the proposed code, the proposal was made for estab-
3309 lishing and revising delivered prices for cement.

And also the minutes of the meeting of the code authority February 20, 1934, Exhibit 630-A and B, in which an interpretation of the code was given to the effect of delivery on purchases at the mill being a diversion that had the effect of reducing the published market price at the point of final destination.

3310 By Mr. Wooden:

Q. Referring, Mr. Reiter, to Exhibit 625-D, a portion of the minutes of the trustees for May 19, 1936, was the expense in opposing the proposed legislation for the establishment of mill base prices stood by the Institute?

A. Do you mean by such opposition the appearance at the hearing of the anti-basing bill?

Q. I am referring to that bill. I am not confining it to any particuar item of expense.

Mr. Zimmerman: Will the reporter read the question?

(The question is read.)

Mr. Leisure: I object to the question as being incompetent, irrelevant, and immaterial.

Examiner Norwood: Read the minutes referred to.

Mr. Wooden. (Reading.) "The secretary called the attention of the board to the fact that the budget for the year 1936 has no provision for the expense involved by the Institute in connection with the hearings at Washington on the Anti-Basing Point bills. A motion was made by Mr. Smith that the expenses incurred by the Institute in connection with the hearings at Washington on the Anti-Basing Point bills be authorized and approved. Motion seconded by Mr. Rader and unanimously carried."

The Witness: That was actually done. The expenses that were incurred in that connection by myself were
3311 paid by the Cement Institute.

Mr. Wooden: Any expenses other than what were incurred by you?

The Witness: No, sir. As far as I know, the expense was my time and the expenses down here in Washington, and such expense as I incurred in telephone calls and telegraph messages in an effort to aid the secretary of the Senate committee in obtaining appearances, etc.

3314 Q. Mr. Reiter, referring to Exhibit 557, being the N.R.A. code as approved in November, 1933, and directing your attention to Article 8, Section 1, is it a fair inference from that, that the measure by which it would be determined whether sales were being made at less than the expense of manufacture, would be by comparing the expense of manufacture with the net return to the mill?

A. This Article 8 of the code, Mr. Wooden—very few of us could understand what it meant, and I was one who never did understand it, and there was never any at-
3315 tempt made to enforce it. It is a provision declaring it an unfair method of competition for any member of the industry to sell cement below cost and then it attempts to describe how that cost shall be determined, in quite a complicated way.

3316 Q. But whether or not it was sold below cost, however, determined, do you see any way by which it could be determined except by comparing it with the mill net?

A. I think that would be the proper way.

Q. As a matter of fact, do you see any other way that it would be possible?

A. I do not.

3318 Washington, D. C.
Friday, February 11, 1938.

3319 GEORGE H. REITER, resumed the stand and testified further as follows:

Direct Examination (Continued).

The Witness: Before you ask another question, Mr. Wooden, I would like to correct some testimony that I gave yesterday in answer to a question of yours.

By Mr. Wooden:

Q. All right.

A. In answer to a question I told you what the principal expense of the Cement Institute was in connection with the Wheeler Anti-Basing Point hearing and I completely forgot the major expense, which was occasioned by the fact that we purchased copies of the official transcript and, in the office of the Cement Institute, reproduced those and sent out copies to members of the industry.

Now, the copies of the official transcript, as I remember, cost us something like $3,000 and the cost of reproducing them was a considerable amount and the cost of those items was the principal expense incurred before the committee.

3320 Q. Was that before members of the industry appeared before the committee?

A. We purchased a complete copy or two complete copies of the official transcript and reproduced only that part where cement witnesses appeared before the committee.

Q. That expense was in addition to what you mentioned yesterday?

A. That is right, in addition to what I mentioned yesterday.

Q. I call your attention, Mr. Reiter, to a provision in the Institute Code of Ethics, Exhibit 138-S, paragraph number 9, declaring it to be unfair to sell cement below cost except in order to meet competitive prices.

A. That is correct.

Q. Then, on 138-T there is a definitian of cost under

article 6. Does the definition of cost include an item of fair return on total invested capital?

A. It does.

Q. In judging any particular sale as to whether it was below cost or not, do you see any way in which that could have been determined except by comparing the cost with the mill net received on a particular sale?

A. No, I think that is the proper measure.

Q. Do you see any other method that is even feasible or possible?

3321 A. I do not.

Q. Did you have a number of resignations from the Institute along in 1930 and 1931 due to alleged violations of the Code of Ethics?

A. We had a number of resignations. So far as I know, they were not due to alleged violations of the Code of Ethics.

3322 Mr. Leisure: If Your Honor please, I wonder if Mr. Wooden would make clear in that question before the last one, what was meant by "cost". I am not quite clear whether he meant plant or cost of making cement. It seems to me that it might make some difference if the witness misunderstood the question.

Mr. Wooden: The definition of cost given in the code is as follows:

"The term 'cost' when used in this Code of Ethics shall be interpreted to include among other items, the following: Cost of raw materials, transportation thereof, manufacture, packing and loading and sack losses, depreciation, depletion, obsolescence, selling and administrative expenses, fair return on the total invested capital."

Mr. Leisure: You were using "cost" as used in the Code of Ethics?

Mr. Wooden: Yes.

Mr. Leisure: That is what I wanted to be sure of.

Mr. Wooden: I was using it for the purpose of my question.

Mr. Leisure: That is what I meant. The witness might have misunderstood you if you had some other definition of "cost".

Mr. Wooden: I offer at this time, Your Honor,
3323 exhibits marked for identification and identified by Mr. Milwee. They were numbered 140-33 and 139-1. They relate to the matter of resignations because of the lack of adherence to the Code of Ethics.

Mr. Leisure: We have no objection to those, Your Honor. It seems to me in a letter of this kind though, the series of correspondence and the replies to the letter, instead of just part of the picture, should go in. I will be satisfied if we are allowed to follow it up.

Mr. Wooden: Oh, yes.

(COM. EXS. 139-A and 140-A were offered and received in evidence.)

Mr. Wooden: I offer at this time exhibit for identification 153-GG previously identified by Mr. Milwee, a circular of the general manager of the Institute to the members, November 20, 1930.

3325 (COM. EX. 153-GG was offered and received in evidence.)

3326 Q. I am showing you, Mr. Reiter, Exhibit 153-GG. Did you set up in the Chicago office, about that time, any machinery for the investigation of violations of the Code of Ethics?

A. I call your attention to the fact that this 3327 letter of Mr. McConnell's is dated November 20, 1930, and I left the Cement Institute, as I previously said, on December 30th. I remember that before I left there was some sort of form furnished by the general office relating to this matter, but it was never put to use by me at Chicago.

Q. You then went to the Missouri Portland Cement Company?

A. Yes, sir.

Q. While there did there come to your attention any investigations of violations of the code?

A. There did not.

3328 Q. Were there any complaints that came to your attention about that time that any members were violating the code by failing to sell at a price which included fair return on invested capital?

A. I recollect none, and I am sure none came to my attention.

Q. Referring now to Exhibit 556, being the proposed N. R. A. code, and Article 9 referring to the competitive result of a difference of one cent a barrel, would you agree with this declaration that the mill which made a difference of only one cent a barrel belonged to a recalcitrant and wasteful minority?

3332 Examiner Norwood: Let the record show that counsel was reading from Exhibit 556, Article 9, page 6, relative to the practice—

3333 Q. Mr. Reiter, can you name manufacturers who, by cutting the price as much as one cent, demoralized the markets in their trade area?

A. I cannot, Mr. Wooden.

Q. I show you papers marked 716-A to F, inclusive, for identification. Will you identify them as authentic circulars put out by the code authority between December 23, 1933, and April 23, 1934?

A. Those are mimeographed copies of letters sent out to members by the code authority during those dates.

Mr. Wooden: I offer these.

Mr. Leisure: Your Honor, here is another complete file of papers that is being offered. The fact that the code authority had something to do with them does
3334 not make them material. I am at a loss to know why this kind of evidence is offered. Is there a contention that these governmental agencies, in acting, did something unlawful that we can be charged with?

Mr. Wooden: I question the appellation "governmental agency" applied to the code authority of the Cement Institute.

Mr. Leisure: It is the N. R. A.—

Examiner Norwood (Interposing): I think it is relevant.

Mr. Wooden: I will say that these papers all relate to the matters of government destination costs, land grant rates, and the so-called control clause.

Mr. Leisure: Assuming that they do, that does not make that material relevant here unless there is something done by one of these respondents for which he can be held responsible. I object to them as incompetent, irrelevant and immaterial.

3335 Examiner Norwood: I think that we have that pretty clear and I am going to overrule the objection and receive these documents as Commission's Exhibits 716-A to F inclusive.

(COM. EX. 716-A to F inclusive was offered and received in evidence.)

Mr. Wooden: 716-A is a circular under date of December 23, 1933.

716-B is a circular under date of March 2, 1934.

716-C is a circular under date of March 24, 1934.

716-D is a circular under date of April 14, 1934.

And 716-F is a circular under date of April 23, 1934.

Examiner Norwood: The dates appear on them?

Mr. Wooden: Oh, yes.

3336 By Mr. Wooden:

Q. In 716-A, Mr. Reiter, the circular of December 23, 1933, you say you have been asked several times to rule whether, under the code, the Federal Government might be quoted with the use of land grant rates and you then go on to say, "I believe that it could be so quoted and sold."

A. This letter, signed by Mr. Rader, as chairman, says that "Our interpretation"—he means of the code authority's ruling on this question of the intent of the code in this matter, "is that the United States Government may be quoted with the use of land grant rates in exact accordance with the prevailing practice prior to the adoption of this code."

3337 Q. Were you aware that the Federal Government was seeking to buy cement f. o. b. mill?

A. I was not at this time, except that I knew that in order to take advantage of land grant rates to which they were entitled, they must take title f. o. b. mill.

Q. Did you know that the Government through various departments was seeking to get f. o. b. mill quotations without any reference to so-called delivered price or Government destination price or cost?

A. I did know that they had issued proposals in which they requested prices f. o. b. mill, and I likewise believed that the proposals were taken soliciting bids f. o. b. destination.

Q. Did the Code Authority, was it asked to make any ruling as to whether the Government could be quoted f. o. b. mill without the use of any rates?

A. I don't recollect, Mr. Wooden.

Q. You do not recall any such requests for ruling?

A. No. Had it been requested, they would have replied this time as they did later that it was entirely within the code provisions to bid to the Government f. o. b. mill.

Q. If that were the case, can you explain why the
3338 definite proviso to that effect went out of the proposed code?

A. Well, I am talking about the provisions of the accepted code, the official N. R. A. code. I can not say why that proviso was—

Q. (Interrupting): I am asking if it was intended that the mills could sell f. o. b. mill, why it was not clearly declared so as the proposed code did declare it?

A. I can not answer that.

Q. What was the prevailing practice prior to the adoption of the code with regard to the use of land grant rates in quoting the Government?

A. I was not in the position to know what the prevailing practice was. It is true I was sales manager with one company which infrequently bid to the United States Government, and at this time I did not recollect their procedure of bidding.

Q. You don't know whether the Missouri Portland Cement Company, for instance, bid on Government business f. o. b. mill or otherwise while you were connected with it?

A. Only one bid made to the Government at that time remains in my memory, because it was the only award of Government business that we had while I was with them, and I believe that that bid was made f. o. b. destination with a stated figure which could be deducted from that bid price so that a price to the Government could be de-
3339 termined f. o. b. its mill for shipment on Federal bills of lading.

3340 Q. Calling your attention, Mr. Reiter, to the bid you referred to of the Missouri Portland Cement Company that you had in mind, when was that, Mr. Reiter?

A. It was in 1931 or possibly in the early part of 1932.

Q. Referring now to Exhibit 716-B, the Code Authority circular of March 2, 1934, I direct your attention to the last paragraph of the circular (handing paper to the witness).

A. (Witness examining paper.)

Q. Would you say, in substance, that paragraph represented what was later known as the control clause filed with bids on Government business?

A. I do not follow you on the order of procedure. The Code Authority did not initiate this Government destination cost-matter, but it was initiated by a member
3341 who filed it with us, and by "us", I mean the Code Authority, and then the Code Authority attempted to explain it.

Q. Is that paragraph, in substance, the control clause that you refer to?

A. Yes, in substance it was the same thing.

Q. I notice that the code authority in that paragraph indicates that the quotations to the government at the bidder's mill on the basis of such costs shall be determined in a certain way. Why were you putting it in the mandatory form that it should be determined that way?

A. I am not sure that I have the dates right, but my interpretation of the letter at this time is that the code authority, having received the filing of a government destination cost, had to determine on its own account whether this was a proper filing of price terms and it decided that it was a proper filing, whereupon it became necessary to explain to the industry what this government destination cost was and, in my opinion, this is using the language of a filing which had probably been made with the code authority by that time.

Q. Did the code specifically provide that you notify members of the industry about the government destination costs that were filed?

3342 The Witness: It did not, but like price filings, which we considered the filing of a government destination cost to be, the code did provide that any member of the industry might meet price terms filed and we did not know how the members of the industry could meet them without being advised of what had been filed.

By Mr. Wooden:

Q. Now, in Exhibit 716-B there was a statement to the effect that bids on government business must be made f.o.b. bidders' mills, so that federal bills of lading

3343 might be used. Did that create any confusion or misunderstanding in the industry?

A. You mean the fact that our statement said—

Q. (Interposing) Bids must be made f.o.b. bidder's mill.

A. That statement created no confusion that I know of.

Q. The circular of March 29—716-C—refers to a misinterpretation created by your circular of March 2. I am seeking to ascertain just what part of the March 2 circular caused the confusion?

A. Having refreshed my memory with this letter 716-C and D, it is evident that there was considerable confusion in dates—confusion in bids made to the United States Government and apparently they interpreted our former letter of March 2 to mean that they could bid to the United States Government without having filed prices for bids to the United States Government f.o.b. mill, and we were calling their attention to the fact that that letter was not intended to void any part of the N. R. A. Code.

Q. What part of the letter of March 2 was it that was misinterpreted and created confusion?

3345 Examiner Norwood: He may give any facts which indicate their reactions to this letter or which indicate their understanding to it, and I will ask the witness to base his answer on his experience in that respect.

The Witness: If my memory and understanding of these letters are correct, I have said that the confusion as indicated in the letter of March 29 apparently was due to members of the industry bidding to the United States Government f.o.b. their mills without having filed such price, and if my reasoning in that matter is correct, it is probably this sentence in the previous letter which they have misunderstood. "In order to secure to the Government such destination costs, it is our understanding that bids must be made f.o.b. bidder's mill so that Federal bills of lading may be used."

Q. According to Exhibit 716-E, circular of April 13, 1934, that constituted a cancellation and substitution for the letter of March 2 on this subject, did it not, Mr. Reiter?

3346 A. That is right.

Q. In that letter, did you change the language which you say caused some confusion before?

3347 The Witness: I think I remember the question. You asked me what the changes were in this later letter.

By Mr. Wooden:

Q. If you changed the language which caused the confusion?

A. Yes, we did change the language, and I presume that was the purpose of changing the language.

Q. I notice in Exhibit 716-E, a circular of April 14, that you then stated that the mill costs are determined by subtracting the land grant rate from the destination cost, whereas on March 2, 716-B, you said it shall be determined.

A. I notice that difference.

Q. Why was that change made?

A. I think that in the first letter, we were quoting from the filing of the Government destination cost which we had had without showing that it was a quotation, and therefore the use of "shall" in that letter was improper.

Q. Are you quite sure that the first use of the

3348 control clause preceded your letter of March 2, 716-B?

A. No, I am not entirely sure, Mr. Wooden. Apparently, however, it had either been filed or the Code Authority had knowledge of any intent to file a Government destination cost, because that is the first time that I see that that phrase has appeared in Code Authority correspondence.

EVERETTE MacINTYRE, was recalled to the stand and testified further as follows:

Direct Examination by Mr. Wooden.

The witness identified Com. Ex. 717A as a photostat of a paper he selected from the files of Nazareth, of Nazareth, Pennsylvania, on June 8, 1934, which was furnished to him by Mr. H. B. Robeson, general manager of that concern. There are initials "H.B.R." on the first sheet and they appear to be Mr. Robeson's initials in his handwriting. They were on "there" when the paper
3349 was photographed; Com. Ex. 717B as a photostat of a paper also furnished to him by Mr. Robeson after witness had selected it from Mr. Robeson's files on June 8, 1934.

Mr. Wooden: I offer those in evidence.

Examination by Mr. Leisure.

The witness said that the scribbled marks beside the first paragraph are in his handwriting. The initials "down below" appear to "H.B.R."—Mr. Robeson's initials. It appears to be in Mr. Robeson's handwriting. He has seen quite a number of samples of Mr. Robeson's handwriting. He is not able to say definitely that
3350 it is Mr. Robeson's handwriting. He can only say it appears to be Mr. Robeson's from samples of Mr. Robeson's handwriting that witness has seen. The writing on the other side of the page is that of witness, placed on the originals at the time he selected them from the files.

3351 Q. Do you have any explanation as to why the second sheet is not a full length sheet?

A. I have no explanation as to why it is not a full length sheet. I can say this, in this instance, that since

my initials and other identifying marks appear at the lower right hand corner, that that was, at that time, the end of the sheet as it was selected from his files and was not clipped off after having been taken from his files.

Q. In other words, it is the complete document as you found it?

A. That sheet is, and, as far as the circumstances show, that is the complete document. I cannot say
3352 whether Mr. Robeson at one time had made other sheets that he expected to attach to it or not.

Q. But it is complete as you found it?

A. Yes, and as I see it now.

3353 Q. Mr. MacIntyre, I show you a paper marked Exhibit 718 for identification. Will you state what that is?

A. This is a photostat of a paper which was furnished to me by Mr. Neylan and Mr. Hogan of the International Cement Corporation on June 7, 1934, after I had selected the paper of which it is a photostat from their files.

Mr. Wooden: I offer it for the record.

Mr. Leisure: No objection, Your Honor.

Examiner Norwood: Received as market.

(COM. EX. 718 was offered and received in evi-
3354 dence.)

GEORGE H. REITER was thereupon recalled as a witness for the Commission and, having been previously duly sworn, was examined and testified further as follows:

Direct Examination by Mr. Wooden.

Q. Mr. Reiter, I am showing you papers marked for identification 277-D and E, purporting to be a copy of a letter of yours dated January 19, 1935, to a Mr. Kantor of the Research and Planning Division of the N. R. A. Do you recall the letter (handing paper to witness)?

A. (Examining paper) I remember the letter.

Q. Were copies of it sent to the various members of the Code Authority?

A. Yes, sir.

Mr. Wooden: I offer the letter. In offering it, I might say that the paper came from the files of Mr. Neylan, a member of the Code Authority.

3356 (COM. EX. 277-D and E was offered and received in evidence.)

Q. Based on your statements in that letter, would you say that the control clause was adopted in part in order to avoid the necessity of filing f.o.b. mill prices?

A. I think that would be a correct statement. It was preferred by the filers to filing f.o.b. mill prices.

Mr. Leisure: Now, the question was whether or not the witness adopted the control clause. I think he can testify as to what he did, but not otherwise.

Mr. Wooden: I did not ask him what he did.

The Witness: May I have the answer read to be sure that I am right?

Examiner Norwood: Did you have a hand in adopting that?

The Witness: No, sir.

Examiner Norwood: Did you hear anybody say why that was adopted?

The Witness: I don't recall that I did your Honor.

3357 Examiner Norwood: Can you state any facts that would indicate why it was adopted?

Mr. Wooden: He did state that in his letter.

Examiner Norwood: Is that the witness' letter?

Mr. Wooden: Yes, it is the witness' letter. Let me read this sentence:

"In order to secure to the Government the advantage of land grant or special freight rates available only to it, and to avoid the necessity of filing a mill price to that end, members of this industry have filed with the Code Authority and the Code Authority has accepted as proper filings destination costs to the United States Government for various specific destinations."

Then it goes on to set out the text of the so-called control clause.

Mr. Leisure: I think the witness out to be allowed to explain that sentence—whether he intended two separate statements following the "and."

Examiner Norwood: He may explain it.

Mr. Wooden: He has been shown the letter and explained it before the particular sentence was read to him.

Mr. Leisure: I do not think he has, at all.

Examiner Norwood: The previous objection is
3358 overruled. Let the record stand.

By Mr. Wooden:

Q. Reference is made in this letter of yours, Mr. Reiter, to the executive order permitting bidders to go as much as 15 percent below their filed prices on government business, and to a protest signed by 92 percent of the members to such an executive order. With whom was that protest lodged?

A. Probably with the deputy administrator in charge of our code.

Q. Was the request for exemption made as well as a protest?

A. Probably so. There was some manner provided by the N. R. A. officials for making orderly protests against the application of that executive order and we followed that procedure—whatever it was.

3359 Q. Wherein did the permission to quote as low as 15 percent below the filed prices on government business constitute a continuing threat of defeating the purpose of the open price plan, as you stated in your letter?

A. My idea of the value to the industry of a plan of open price filing is that each member of the industry would have full knowledge of competitive prices and from there could use its own judwment as to what it wanted to file and quote. Of course, under the application of the executive order, there considered, the competitors could not know what—I mean any manufacturer could not know what any competitor might be willing to quote on any government job.

Now, then, these government jobs required considerable amounts of cement. A progressive reduction of 15 percent in the filed price from one job to another would certainly, in my opinion, become finally destructive competition and encourage selling below cost.

Q. That was a maximum of 15 percent, was it not?

A. That was a maximum.

Q. What was there to prevent someone making a reduction of 5 percent below the filed price and then filing a reduction?

A. Under the provision of that executive order, anybody who bid to the government within 15 percent below their filed prices must necessarily immediately file it with the code authority; that is, I mean, after they had

3360 bid it. Now, then, the progressive reductions would go on from there.

Q. In other words, one might bid 5 per cent, 7 per cent, and 10 per cent—

A. (Interposing.) I mean on subsequent lettings.

Q. And even on succeeding lettings, one might make it 5, and another 7, and others 3?

A. Yes.

Q. So, if that were done, you would have all sorts of prices bid on government contracts?

A. That is right.

Q. And is that what you thought threatened defeat of the purpose of the open price plan?

A. No, I have described what I thought would defeat the purpose of the open price plan; namely, the progressive reduction in prices until the price of cement got below the cost of production, which has happened in this industry.

Q. Under the terms of the executive order, however, it would have been no violation of the code if members had bid prices up to 15 per cent below their filed prices?

A. That is right.

Q. I am showing you exhibits marked 277-G and H and K and L and M for identification. These were obtained from the files of Mr. Neylan by our Mr. Wideman, but I will ask you if you recall the exchange of correspondence represented in those papers.

3361 A. (Examining papers.) I remember this exchange of correspondence. It is a very long letter, and with that preliminary identification, I will not read it through.

Q. It has already been identified, and I thought I would show it to you for, I might say, supplementary identification; not because I thought the other was insufficient.

Mr. Wooden: I now offer it for the record.

3366 COM. EX. 277-G and H and K, L, and M was offered and received in evidence.

3370 Mr. Leisure: I want to object to any further examination, since this has been certified up, and Your Honor has entertained our motion, until we can get a ruling from the Commission.

Examiner Norwood: I do not think that operates to stop these proceedings. Of course, if this document is ruled out by the Commission, this examination based thereon would be stricken. I would strike it on my own motion if necessary.

Q. I call your attention, Mr. Reiter, to a statement of

yours in Exhibit 277-K to the effect that the estimated land grant rates ordinarily vary from the actual only by a small fraction of a cent per hundred pounds. I notice you use the word "ordinarily." Are you aware of cases where it varies considerably more than a small fraction of a cent per hundred pounds?

A. My knowledge of that, Mr. Wooden, would be confined to the time this was written, at least, to the
3371 government destination costs which were filed with the Code Authority. Frequently we had more than one government destination cost filed for the same destination, and while I have no sepcific instances in mind, occasionally there was quite a variance between two government destination costs. It was still within small limits, but not within a fraction of a cent per barrel or per hundred pounds.

Q. Well, I am not quite clear whether I understand that. Do you mean there were or were not cases that came to your attention where the estimated land grant rates varied from the actual by more than a small fraction of a cent per hundred pounds?

A. The land grant rates themselves very infrequently came to my attention, therefore I am answering in respect to government destination costs which did come to my attention and which were—

Q. (Interrupting.) Which were all estimated?

A. I beg your pardon?

Q. Which were all estimated?

A. They were figured, I presume—I don't know whether you would call them estimated or not.

Q. Well, in the same letter just above, you had stated that the exact rates were known only to the government in most instances, and the government had refused to disclose them?

A. Except in a few instances. My own opinion is
3372 that a competent traffic manager knowing the division of freight rates as between two land grant carriers can figure a land grant rate just as exactly as an officer of the government. However—

Q. (Interrupting.) Do they get those divisions? It has been testified here that they did not.

A. Well, they would get them and know them if the railroad tells them, and I am sure in some instances that the railroad has given that division of rates. Now then,

may I continue and say that whether the government officer figures these land grant rates correctly or not, apparently the rate which he determines on prevails, whether it is correct or not, so that that is what the railroad is finally paid on.

Q. Even if the estimated land grant rate varied from the actual only by a small fraction of a cent per hundred pounds, wouldn't that frequently run it into more than a cent per barrel?

A. Well, it depends on the fraction.

Q. Quite so.

A. In the case of sack cement, of course you multiply the difference per hundred pounds by 3.8 cents.

Q. If you had a fraction of a third of a cent or thereabout, you would run it over a cent per barrel?

A. I should have said multiply it by 3.8, not by 3.8 cents.

Mr. Wooden: Now, will you answer my question?
3373 I will ask the reporter to read it.

(The question is repeated.)

The Witness: If that was the fraction, it would be over a cent per barrel.

By Mr. Wooden:

Q. And no matter how small the fraction might be in variance between the actual and the estimated rate, you would have some variations in destination cost, would you not?

Examiner Norwood: I take it that this witness had to do with these rates and the rules to meet certain conditions, and he has had transactions involving them and that he knows something about them. Is that so, Mr. Witness?

The Witness: Under the Code Authority, Your Honor, I had knowledge of government destination costs filed with the Code Authority. The only knowledge that I had of land grant rates were such as my attention was called to in connection with some government bids where
3374 they appeared in the proposal.

Examiner Norwood: Did you figure those out?

The Witness: No, sir, I had no cause to figure them.

Examiner Norwood: Can you answer what he is asking you now, of your own knowledge?

The Witness: I do not have in mind now just the result that he is asking for.

Examiner Norwood: Do you know that? Have you figured that out? Can you answer that from your own knowledge?

The Witness: It is just a mathematical deduction, your Honor. Do you want me to answer that question?

Examiner Norwood: Answer it if you can. Objection overruled.

The Witness: My answer is that to the extent that the computed land grant rate was in error either more or less the actual, that that difference would be carried forward into your government destination cost as computed with the aid of that land grant rate.

3375 By Mr. Wooden:

Q. Referring you to Exhibit 399-S, were you there computing or calculating land grant rates?

A. No, sir.

Q. The figures I understood you to say you wrote on there—are not these your here (indicating)?

A. No, they are not my figures. I think this (indicating) was in my handwriting—the word "withdrawn"—and this name of the company was in my handwriting (indicating).

Q. Were such computations made in your office under your supervision?

A. No.

Q. Who did that work?

A. I know what this may be, but at any rate the computations were not made in our office. Occasionally, when some particular destination was involved, we had to

3376 calculate, as I indicated yesterday, prices and government destination costs on file, so that we could give the members of the industry complete information as to all filed prices which might influence a certain price.

Q. I notice on Exhibit 277-K—your letter to Professor Burns—you stated "A government destination cost is filed and bid in lieu of a mill price."

I thought it was your opinion that the government destination cost was a mill price?

A. Maybe I have not used the phrase "in lieu" correctly, but it is my opinion that a government destination cost bid is the same as a mill price.

Q. We had an exhibit this morning in which you said that the government destination cost and the control clause were used to avoid the necessity of filing a mill price.

A. Well, my comment on that would be that while the two may be different in form, they are, in effect, or may be in effect, the same thing.

Q. Were you aware that the government purchasing agencies took a contrary view of that?

3377 The Witness: I do not recollect the exhibit.

By Mr. Wooden:

Q. You remember that portion of it where you said the control clause and the government destination cost were used to avoid the necessity of filing an f. o. b. mill price?

A. I remember some wording of that kind.

3378 Examiner Norwood: Counsel should bring that up while the examination is going on and I will see that the witness sees the exhibit.

Mr. Wooden: We went over it this morning, of course.

By Mr. Wooden:

Q. Now, in Exhibit 277-L, you make the statement that in certain cases branches of the United States government have attempted, probably through misunderstanding, to secure to the government a lower price f. o. b. mill or destination than was intended by bidder as evidenced by his filing and a few of such attempts have been successful.

In view of that statement, do you still say that the f. o. b. mill price and government destination cost were the same?

3379 A. Yes, sir; and I would like to go further and tell you what I mean by that paragraph.

Q. All right.

Examiner Norwood: Go ahead.

A. I think it has been described what a government destination cost is. I would like to state, in my own way, that in my opinion it is the lowest sum of any price base or maximum mill net plus the lowest freight available to the government.

Q. On an estimated basis?

A. Well, on a computed basis so far as land grant rates are concerned.

Now, then, the so-called control clause—first, let me say, however, that in my opinion, in adding to every price base its lowest government freight to destination, you have taken into account the lowest freight rate available to the government from any point that could affect that price.

Now, then, the government destination cost, in my opin-

ion, was bid in such a manner that the control clause providing that the goverment should subtract the lowest freight available to it, made it plain as to what was intended in the bid.

Now, when the government purchasing agency, instead of following that provision of the bid, subtracted a
3380 higher freight rate, they were, in the case where they subtracted the commercial freight rate, taking advantage of the land grant rate twice.

Examiner Norwood: They were reducing the mill net by the difference between the two rates, were they?

The Witness: Yes, sir.

By Mr. Wooden:

Q. And in cases where the deduction was the difference between the actual and the computed or estimated land grant rate was greater, where the actual land grant rate was greater than the estimated—where it was less than the estimated—that increased the mill net, didn't it?

Mr. Leisure: Your Honor, on this estimated and actual, I do not understand what counsel means by those terms, because his own witness here told us that they were often figured incorrectly by the government, so they are both estimated.

Mr. Wooden: No matter how figured, they are the actual.

Mr. Leisure: If the figures are corrected the first time, what counsel is referring to as the estimated, then is the actual rate.

Mr. Wooden: Oh, no.

Mr. Leisure: The actual rate may not be just as the government figured it, because they figured it finally,
3381 but they are both estimated rates until they are paid.

Mr. Wooden: Whether they are wrongly figured, the actual one is the one that the railroad receives for its services.

Examiner Norwood: I think all of that is clear. Read the question.

Mr. Wooden: We have had testimony here as to the difference between the actual and the estimated rates.

Examiner Norwood: Read the question.

(The question is read.)

Mr. Wooden: I will reframe the question. Apparently I got off to a wrong start, and it certainly is not clear.

By Mr. Wooden:

Q. And in cases where the actual land grant rate was less than the estimated land grant rate, the result would be to increase the mill net, wouldn't it?

Mr. Leisure: I object to the question on the ground that there is no distinction of that kind made between estimated and land grant freight rates; on the further ground that the witness is not an expert in these matters and can not answer except by hearsay; and on the further ground that it calls for his conclusion and would not be bind-
3382 ing on the respondent if he were able to testify to it.

Mr. Wooden: It has been shown by a good deal of testimony.

Examiner Norwood: Read the question as now worded.

(The question is read.)

Examiner Norwood: Objection overruled. You can answer that.

The Witness: That may be the result.

Examiner Norwood: The result is obvious, as far as that goes.

Mr. Leisure: The question is not complete unless he says "If they deducted the land grant rate."

Examiner Norwood: I think that is implied.

By Mr. Wooden:

Q. You had considerable discussion, did you not, from time to time, among members of the Code Authority as to whether or not the control clause did or might have the effect of depriving the Government of the benefit of land grant rates?

A. I think so. I think I remember that.

3388 Examiner Norwood: The documents marker 277-J and N, are received for consideration of everything except the note on the bottom of the second sheet addressed to Mr. T. J. McFadden, of Donovan, Bond & Leisure, Washington, D. C. Everything below that is to be disregarded and the exhibit is considered in evidence subject to the conditions named.

(COM. EX. 277-J and N was offered and received in evidence.)

Q. I am showing you now, Mr. Reiter, papers previously marked for identification 227Q, R, S, T, U, and V, and I will ask you if you remember that correspondence to which you appear to have been a party?

A. (After examining papers) I remember the correspondence.

These are offered in evidence.

3393 A. Did you have a meeting, Mr. Reiter, with members of the industry in Chicago at which the question of bidding destination costs to the government was discussed?

A. Having my memory refreshed by those papers, I know that we did have. I was present at such a meeting.

Q. When was it held?

A. I do not remember.

Q. Con you refresh you recollection by looking at those papers?

A. April 23, 1935.

Q. Can you state who was present?

A. I do not remember.

Q. Look at the papers and see if you can refresh your recollection as to those present.

3396 Mr. Wooden: My question was whether there were persons present at the Chicago meeting other than the code authority.

Examiner Norwood: That is what I thought the question was, but he made a motion to strike out what was read from that exhibit. You can answer the other question after referring to your memorandum or to any paper you

3397 have.

The Witness: I do not believe that all of these people, whose names are here, were present at that meeting, and I do not know, among those, who were present at the meeting.

3398 Q. Will you state whether or not it was agreed at that meeting that the method so far followed or up to that time followed in calculating Government destination costs, did not secure to the Government the full advantage of land grant rates?

A. If my memory serves me correctly, that view was advanced by some at the meeting. I don't remember how widely that view was held.

Q. State whether or not one reason for that view was that the land grant rates were estimated, and that the Government had refused to furnish the industry with the exact rates.

3399 The Witness: May I attempt to refresh my memory?

Mr. Wooden: Yes.

Examiner Norwood: State whether or not anyone at that meeting advanced the reason suggested by the counsel in the question that was excluded.

The Witness: If it is necessary in answering that question for me to state who advanced that view, I can not answer.

Examiner Norwood: Was the view accepted by the meeting generally?

3400 The Witness: Refreshing my memory from this letter, it was apparent that the opinion was that the then method of bidding a Government destination cost did not give to the Government the exact advantage of land grant rates.

3401 By Mr. Wooden:

Q. Were there minutes of that meeting, Mr. Reiter?

A. I am sure there were not.

Mr. Zimmerman: I understood the witness was referring to a note or a memorandum as the basis for his statement.

Examiner Norwood: He is refreshing his memory. He testified to it as a fact.

Mr. Zimmerman: Quite so.

By Mr. Wooden:

Q. Was the question discussed at that meeting as to how non-basing point mills were affected by the question of government destination costs?

A. I believe that they were.

Q. What was the substance of the discussion along that line?

A. Apparently that the so-called non-basing point mill did not influence in any way the Government destination cost.

Q. And what was the relation of that to the question whether or not the Government was being deprived of the benefit of land grant rates?

A. It was the thought of some there that inasmuch as the Government destination cost would never be determined from the shipping point of the non-basing point mill, that so far as that mill is concerned the Government might not get the full advantage of the land grant rates from that mill.

3402 Q. In other words, the non-basing point mill might have been at a greater distance freightwise on a land grant basis from the destination than the basing point mill, and thereby cause a greater freight rate than if the basing point mill got the contract? Do I state that correctly?

A. I do not think so, Mr. Wooden.

Q. Well, just straighten me out.

A. It only means that just as the non-basing mill does not itself make any commercial price, so it does not make any Government destination cost. It accepts in the case of the Government destination cost, such cost as figured on the known bases of other mills, and therefore the Government gets the full advantage of the land grant rate from these other mills, in my own opinion, but the method of bidding by a non-basing mill would not be governed in any way by a mill price at that mill.

Q. How would that affect the mill net of the non-basing mill?

Examiner Norwood: Do you understand this proc-
3403 ess of working out these mill nets and the effects that these bids have?

The Witness: I believe, Your Honor, that I do understand the Government destination cost.

The Witness: It merely means that the company having the non-basing mill would bid a figure which would be the total cost to the United States Government at the destination named, and then would, under the provision
3404 of the so-called control clause, allow the government to deduct the correct land grant rate from that government destination cost, to determine its invoice price, which would be its net f. o. b. its mill.

Examiner Norwood: It would allow it to determine the cost by deducting the land grant rate from the base—the nearest base rate—from its mill?

The Witness: It would allow the government to deduct from the government destination cost the applicable land grant rate from its own mill to that destination.

Examiner Norwood: And not from the base point?

The Witness: That is right.

By Mr. Wooden:

Q. You said that the control clause would allow the government to deduct the correct land grant rate. Did not the control clause allow the government to deduct only the

—rather, was not the effect of it to require the government to deduct itself an estimated rate rather than the actual?

A. No, sir.

Q. Did it ever come to your attention that the actual final rate was not even known to the government until final settlement?

A. Yes, I have heard that stated.

3406 Q. Mr. Reiter, were there instances brought to your notice where, in the use of the control clause by non-basing point mills, a mill would net more on government business at the mill than it did on commercial contracts?

A. I know of no specific instances, but that is, of course, possible.

Q. Was that phase of the matter discussed at any meeting at which you were present?

A. I do not recollect, but I will attempt to refresh my memory.

3408 Mr. Jaques: Your Honor, I have delivered to you four packets of papers, as follows, marked as follows on the back: "L. P. C. Co., 2-11-38, 9 pages."

Examiner Norwood: That is from what company?

Mr. Jaques: Lehigh Portland Cement Company. That is marked No. 1.

Examiner Norwood: That will be marked Commission's Exhibit 719-A to I for identification.

Mr. Jaques: The next is marked "L. P. C. Co., 2-11-38, 4 pages, No. 2."

Examiner Norwood: That will be marked Commission's Exhibit 720-A to D, for identification.

Mr. Jaques: The next is marked "L. P. C. Co., 2-11-38, 10 pages, No. 3."

Examiner Norwood: That will be marked Commission's Exhibit 721-A to J for identification.

Mr. Jaques: The next is marked "L. P. C. Co., 2-11-38, 22 pages, No. 4."

Examiner Norwood: That will be marked for identification "Commission's Exhibit 722-A to V."

3409 (Each document thus produced was marked for identification as indicated by the directions of "Examiner Norwood.")

Mr. Heffernan: Repesenting the Green Bay Cement Company of Pennsylvania, I offer a carbon copy of a letter dated April 5, 1934, from A. P. Meyer to W. A. Davis, two pages.

Examiner Norwood: That is marked 723-A and B for identification.

Mr. Heffernan: A letter dated January 14, 1933, E. B. Odenkirk, Chairman, Central Cement Group, to A. P. 3410 Meyer; carbon copy of a letter dated January 13, 1933, A. P. Meyer to E. B. Odenkirk; carbon copy of a letter dated June 14, 1933, A. P. Meyer to J. B. John, President, Medusa Portland Cement Company; letter dated June 12, 1933, J. B. John to A. P. Meyer,—four pages in all.

Examiner Norwood: Those will be marked Commission's Exhibit 724-A to D for identification.

Mr. Heffernan: General Manager's report of The Cement Institute, dated December 11, 1936, consisting of four pages.

Examiner Norwood: That will be marked Commission's Exhibit 725-A to D, for identification.

Mr. Heffernan: Letter dated April 4, 1934, from B. F. Affleck, Chairman, Committee on Public Relations, The Cement Institute, dated April 4, 1934, to A. P. Meyer; memorandum dated April 10, 1934, entitled "A Public Relations Plan for the Cement Institute"; memorandum dated April 10, 1934, of Committee to Study Public Relations, Cement Institute, entitled "Recommendations Accompanying Public Relations Plan"; letter dated 3411 March 26, 1934, from the Chairman of Public Relations to the Cement Institute, addressed to A. P. Meyer; carbon copy of letter dated March 24, 1934, from A. P. Meyer to B. F. Affleck; letter dated March 21, 1934, from B. F. Affleck, Chairman, to A. P. Meyer; extract from address of the Hon. Harold L. Ickes, Secretary of the Interior, and a memorandum dated 3-16-34; extract from remarks of Senator Nye before the Senate in a memorandum dated 3-16-34,—21 in all.

Examiner Norwood: Those will be marked Commission's Exhibit 726-A to U for identification.

Mr. Heffernan: Letter dated January 28, 1937, from G. H. Reiter to all members of the Cement Institute, Executive Letter No. A-57. That is a separate set consisting of one page.

Examiner Norwood: That will be marked Commission's Exhibit 727 for identification.

Mr. Heffernan: The next set is a letter dated February 26, 1934, from W. A. Davis, Vice-President, Standard Port-

land Cement Company to A. P. Meyer; letter dated
3412 February 23, 1934, from G. H. Reiter, Chairman to all members of the industry in U. S. Districts 3, 4, 5 and 7; letter dated February 23, 1934, from Frank H. Smith, Trustee, District No. 1, and John J. Porter, Trustee, District No. 2, to members of Districts 1 and 2. That is another set consisting of three pages.

Examiner Norwood: That will be marked Commission's Exhibit 728-A to C for identification.

Mr. Heffernan: Executive Letter A-49 of The Cement Institute, dated November 21, 1936, 6 pages.

Examiner Norwood: That will be marked Commission's Exhibit 729-A to F for identification.

Mr. Heffernan: That is all I have, Your Honor.

(Each document thus produced was marked for identification as indicated by the directions of "Examiner Norwood".)

Mr. Hershberger: On behalf of the Universal Atlas Company, I have a group of papers, all photostats, the first group being numbered in the lower left-hand corner of each page from 332 to 343, inclusive. These numbers I am mentioning are our own identification numbers. The second group is numbered 352 to 358, inclusive, and the third group is numbered 362 to 374, inclusive.

3413 That is a partial compliance with the subpoena, and there will be other papers coming in later.

Examiner Norwood: They will be marked for identification Commission's Exhibit 730-A to LL.

(The documents referred to were marked for identification "Commission's Exhibit 730-A to LL.")

3415 Washington, D. C.
Tuesday, February 15, 1938.

3416 Mr. Leisure: Your Honor, I have here papers produced on behalf of the Alpha Portland Cement Company. To save time in this hearing, we have gone through the files and numbered the pages. There are 334 in this file.

Examiner Norwood: They will be marked for identification Commission's Exhibit 731-A to blank.

Mr. Leisure: All of these papers that I am now offering your Honor are in partial compliance. I think that is understood?

Examiner Norwood: Yes.

Mr. Leisure: I am now producing papers from the Ash Grove Lime & Cement Company. That is a small company, Your Honor. This package comprises five sheets of papers.

3417 Examiner Norwood: Mark them for identification 732-A to E.

Mr. Leisure: I also produce papers of the Giant Portland Cement Company, constituting 45 sheets.

Examiner Norwood: Mark them 733-A to SS.

Mr. Leisure: The Hermitage Portland Cement Company—41 sheets.

Examiner Norwood: Mark them for identification 734-A to 00.

Mr. Leisure: In the following cases, Your Honor, a subpoena was served on the Ideal Company. We have divided up these folders with respect to the subsidiary companies. The first is the Three Forks Portland Cement Company.

Examiner Norwood: This is the Ideal Portland Cement Company?

Mr. Leisure: Yes, sir.

Examiner Norwood: And this is the Three Forks, you say?

3418 Mr. Leisure: The first I have is the Three Forks Portland Cement Company.

Examiner Norwood: How many papers?

Mr. Leisure: Two sheets.

Examiner Norwood: Mark them 735-A and B.

Mr. Leisure: The next is the Union Portland Cement Company.

Examiner Norwood: How many sheets there?

Mr. Leisure: Four sheets.

Examiner Norwood: Mark them 736-A to D.

Mr. Leisure: The Oklahoma Portland Cement Company.

Examiner Norwood: How many sheets in that?

Mr. Leisure: Forty-nine sheets.

Examiner Norwood: Mark them 737-A to WW.

Mr. Leisure: The Nebraska Portland Cement Company—24 sheets.

Examiner Norwood: Mark them 738-A to X.

3419 Mr. MacIntyre: If your Honor please, I believe Mr. Leisure has made the statement that this is in partial compliance with the subpoena served on the Ideal Cement Company. Those subpoenas were served upon the subsidiaries as such, and the subpoena only went to the extent of requesting the production of papers passing between the Ideal Cement Company and the subsidiaries.

Mr. Leisure: We saw no use in having a subpoena served upon each subsidiary. We assumed they wanted the papers from the subsidiaries and we have produced them.

The next is the Kosmos Cement Company.

Examiner Norwood: That is another subsidiary?

Mr. Leisure: No; that is another company. We have finished with the subsidiaries. This comprises 21 sheets.

Examiner Norwood: Mark them 739-A to U.

3420 Mr. Leisure: Next is the Lone Star Cement Corporation, 44 sheets.

Examiner Norwood: They will be marked 740-A to RR for identification.

Mr. Leisure: The next one is the Medusa Portland Cement Company, 12 sheets.

Examiner Norwood: They will be marked 741-A to L for identification.

Mr. Leisure: The next is the National Cement Company, 7 sheets.

Examiner Norwood: They will be marked Commission's Exhibits 742-A to G for identification.

Mr. Leisure: The Nazareth Portland Cement Company is the next, 34 sheets.

Examiner Norwood: They will be marked Commission's Exhibits 743-A to HH for identification.

Mr. Leisure: The North American Cement Com-

3421 pany is the next, 77 sheets.

Examiner Norwood: They will be marked Commission's Exhibits 744-A to YYY for identification.

Mr. Leisure: The next is the Pennsylvania-Dixie Cement Corporation, 77 sheets.

Examiner Norwood: They will be marked Commission's Exhibits 745-A to YYY.

Mr. Leisure: The next is the West Penn Cement Company, one sheet.

Examiner Norwood: That will be marked Commission's Exhibit 746 for identification.

Mr. Leisure: The next is the Cement Institute, 12 sheets.

Examiner Norwood: They will be marked Commission's Exhibits 747-A to L for identification.

Mr. Leisure: Are there any individuals here who have anything to present?

3422 Mr. Hershberger: I have seven sheets for the Universal Atlas Cement Corporation, which have been identified in the lower left-hand corner of the respective sheets by the following numbers, 375, 378, 379, 383, 384, 385 and 389, which I tender subject to all of the conditions and the objections which were made with respect to the first tender of Universal Atlas.

Examiner Norwood: All of these are received under the same conditions as heretofore, with the same exceptions and the same procedure will be followed. They will be marked Exhibits 748-A to G.

Mr. Leisure: I was going to cover Mr. Hershberger's objection after all of the papers are in. I understand Your Honor's ruling applies not merely to Mr. Hershberger's objections, but to all of the papers that I presented.

Examiner Norwood: Yes, all that we are receiving and all that we do receive under these subpoenas duces tecum.

Mr. Paust: On behalf of the Lehigh Portland Cement Company, I am producing this morning four files in partial compliance with the subpoena, they being supplied on the same basis as our previous production.

3423 The first is a file consisting of 49 papers.

Examiner Norwood: They will be marked Commission's Exhibit 749-A to WW for identification.

Mr. Paust: The second file is one of 28 pages.

Examiner Norwood: They will be marked Commission's Exhibit 750-A to BB for identification.

Mr. Paust: The next consists of a file of 14 papers.

Examiner Norwood: They will be marked Commission's Exhibit 751-A to N for identification.

Mr. Paust: And the last file consists of 12 pages.

Examiner Norwood: They will be marked Commission's Exhibit 752-A to L for identification.

(Each document thus produced was marked for identification as indicated by the directions of "Examiner Norwood".)

3425 GEORGE H. REITER, was recalled as a witness on behalf of the Commission, and having been previously duly sworn, was examined and testified further as follows:

Direct Examination by Mr. Wooden (Continued)

Q. Mr. Reiter, referring to Commission's Exhibit 277-L, being a portion of your letter to Professor Burns, dated April 11, 1935, and calling attention to your statement about the filing of prices for water transportation, and particularly to your statement about the three places where f.o.b. barge prices were filed, I want to ask you to state what the three places were that were referred to?

A. I cannot do that with any accuracy, Mr. Wooden. I have forgotten.

Q. Do you remember any.

A. It would be a guess on my part, and it would depend upon the date of this letter which I see is April 11, 1935. I could not say.

3426 Mr. Wooden: In Professor Burns' letter to you of April 3, 1935, Exhibit 277-G, he makes reference to certain of your general letters, one dated October 5, 1934; and another one of November 19, 1934. I should like to ask at this time for the production of these letters. They do not seem to be in our possession.

Mr. Leisure: What letters are those, Mr. Wooden?

Mr. Wooden: General letters put out by Mr. Reiter or rather by the code authority, under those dates,—October 5, 1934 and November 19, 1934.

By Mr. Wooden:

Q. Reference is also made to a general letter of June 19, 1932. Is that an error, Mr. Reiter—that date?

A. Yes, it is.

Q. Being written in April, 1935, and with the code

going into effect after June, 1933, the natural inference would be that the right date would be 1934.

A. I cannot state what is the right date, but at
3427 any rate, we were not issuing any general letters in June, 1932.

Q. Some reference is made here to orders being obtained at times by selling aggregates at attractive prices. Will you describe, in your own way, what that practice consisted of?

A. It was charged several times, as a complaint under the code, filed with the code authority, as provided by the code itself, that a member of the cement industry did not sell cement at a price less than that which he himself had filed with the code authority, but in effect it accomplished the same thing by selling an allied product over which they had control at a special price much lower than it was sold to others or sold on similar jobs.

Q. An allied product say, such as sand or gravel?

A. Sand or gravel, which is used in concrete.

Q. And was that practice declared by the code to be an unfair method of competition?

A. Yes, sir.

Q. When I say "the code", I mean the entire N. R. A. code.

A. Yes, sir.

Q. Was it so classed in the Code of Ethics of the Institute adopted back along in 1929 or 1930?

A. I don't know, Mr. Wooden.

Q. Was it so classed in the compendium that was later published?

A. I don't know that.

3428 Q. Is that a practice that is open as a practical matter to all cement mills, or do certain cement mills have advantages along that line that others do not have?

A. I would say that it was a practice open to any cement manufacturer, and I would also say that if any cement company actually owned the deposits of aggregate, they would have an added advantage.

Q. And were there some that did not own the deposits of aggregate that you refer to?

A. Well, except that all of them owned quarries which could produce commercial stone if they cared to produce it.

Q. Did you have complaints from time to time that certain mills were selling aggregates in this manner?

A. Yes.

Q. How did you handle such complaints?

A. Well, we handled such complaints as we handled all complaints. Where our first information indicated to us that a violation of the code had occurred, we sent our information contained in the complaint to the respondent in the case and asked for his information or his side of the situation, and by correspondence we continued until we thought that we had complete information, and when and if a violation of the code appeared to us, we certified that fact to the Compliance Division of the N. R. A.

Mr. Leisure: I assume from what the witness has
3429 said that he has been describing what happened during the code period, Your Honor. I think the record should be clear on that.

The Witness: That is correct.

Examiner Norwood: I think that is very clear.

By Mr. Wooden:

Q. Was the method of handling such complaints similar under the Trade Practice Committee?

A. We attempted the same procedure. As I have said, it was not successful.

Q. In your letter to Professor Burns of April 11, 1935, Exhibit 277-L, you said that the filed truck prices were usually the same as the carload prices f.o.b. the same destination?

A. Mr. Wooden, did you misstate the date of that letter?

Q. April 11, 1935 (handing paper to witness).

A. (Examining paper) That is right.

3430 Q. Isn't it a fact, Mr. Reiter, that in general for short distances, that the cost of delivering cement by truck is less than the cost of delivery by rail?

Mr. Leisure: This witness if he knows of his own knowledge, may answer that, but not otherwise.

Examiner Norwood: He may answer the question.

3431 The Witness: I do not know as I can answer from my own knowledge. I would like to observe that if I have, in my testimony, stated that truck rates are generally less than rail rates, I believe I have made a misstatement. I did not know that I had made such a statement.

3432 Q. Mr. Reiter, the last question I asked you was with reference to the comparison between rail rates

and truck rates for distances up to a hundred miles. The Examiner sustained an objection to the question in the form that I asked it and I will reframe it. Based on your experience as a salesmanager and also based upon your contacts with members of the industry while you were chairman of the Trade Practice Committee and connected with the Code Authority, did you find that truck rates were generally lower than rail rates for distances say up to 100 miles?

A. Mr. Wooden, I believe it is impossible to make an all-inclusive answer to that question, without having any truck rates in mind even on short hauls. Truck rates compared to switching rates from the mill might well be higher, but where there is an advantage in truck rates as against rail rates, it is in the shorter hauls. Moreover, I would like to say that in my mind, a hundred miles is a long haul for a truck, and I would be surprised if any
3433 truck haul of a hundred miles would be equal to a rail rate for that distance.

Q. Was not the lower rate by truck for short hauls one of the problems of the industry that it has dealt with over a period of years?

A. I don't know as you would classify it as a problem. I know that the railroads on occasion have proposed to put in and have in some cases accomplished putting in lower rates to compete with short hauls by truck.

3435 Q. Mr. Reiter, in the course of your contact with the industry and members of the industry, both as sales manager and as member of the code authority and chairman of the Trade Practice Committee, were there some areas or sections of the country in which the members of the industry put a ban on the use of trucks?

3436 The Witness: In an effort to make a definite answer to your question—your asked the question in my capacity as sales manager. I know as to my own company that they discontinued trucking from one of their mills.

You asked me in my capacity as an officer of the code authority and, in that capacity, as reflected by filings throughout the country, there were many sections of the country where no provisions were filed covering delivery by truck and many sections where there were such provisions filed.

3437 Does that make a complete answer?

By Mr. Wooden:

Q. It makes some measurable advance towards it, yes.

Examiner Norwood: What was your company's objection to filing provisions covering truck deliveries?

The Witness: They were not filing prices at that time, your Honor, but they discontinued trucking from their mill at Sugar Creek, Missouri.

By Mr. Wooden:

Q. When?

A. Probably—well, I think it was in 1931.

Mr. Hershberger: What company are you talking about?

The Witness: The Missouri Portland Cement Company.

Mr. Leisure: He has not finished his answer. His Honor asked why they did it.

Examiner Norwood: I will take that as his answer.

By Mr. Wooden:

Q. Did other mills discontinue trucking in that section of the country about that time?

A. I do not know whether there were any other mills in that vicinity trucking from their plant or not.

Q. Have you not attended meetings at mills at which the question of whether to truck or not to truck arose for discussion?

3438 A. As I recollect, none.

Q. Have not the lower rates for trucking for shorter distances, compared with rail rates, been one of the reasons why trucking has not been favored?

The Witness: To the extent where the trucking rate is lower on short distances, I do not believe that that is the—I have never heard that as an objection to the use of trucks.

3439 Q. Coupled with the uncertainty of truck rates, then what would you say?

A. The uncertainty of the truck rates is a factor, but the principal factor, in my mind, is the dissatisfaction of the customer with that formula.

Q. Some customers have been satisfied with it, isn't that true?

A. That is true.

Q. Has it ever come to your attention that delivery

by truck made a lower destination price than delivery by rail?

A. I know of no lower destination price filed by truck than a destination price for delivery by rail during the code days.

Q. That was in substance what you said in your letter that we started out with a while ago.

Examiner Norwood: Is there not a saving by delivery on the job instead of delivering it f.o.b. cars at the destination point?

The Witness: That is a distinct saving to the customer in the place of delivery, Your Honor.

By Mr. Wooden:

Q. I asked you why it was at the outset that the filed prices for delivery by truck were usually the same as the filed prices for delivery by rail.

3440 Examiner Norwood: If you can answer that from your own knowledge as gained from your official duties in connection with the receiving of these prices, you may do so.

The Witness: My statement in that letter is absolutely correct. The prices for delivery by truck were usually the same as for delivery by rail. When you ask why they were the same, then I can only give you my opinion, Mr. Wooden.

3442 By Mr. Wooden:

Q. Is it not a fact, Mr. Reiter, that if the destination price delivered by truck had followed the truck rates rather than the rail rates, that frequently the destination price by truck would have been lower than the price by rail?

The Witness: I assume of course that your question means that if you added truck rates where they were lower than rail rates to price bases—

By Mr. Wooden:

Q. (Interrupting.) Right.

A. Then just ordinary arithmetic would tell you that that procedure would have made a lower destination cost than adding the higher rail rate.

Q. And that would have been a rather frequent occurrence where trucks were used?

A. I don't know to what extent. As I say, there would be some instances.

3443 Q. Have you found that delivery charges by water have been less than delivery charges by rail?

3444 The Witness: I am not generally familiar with water rates inasmuch as they are usually not filed rates. I know of some water rates or rates paid to bargemen on the Mississippi River which were exactly the same as the rail rate.

By Mr. Wooden:

Q. And you have not known anywhere they were lower?

A. No, sir.

Q. Did you ever hear a discussion in the meetings of industry members as to the question of the relation between water rates and rail rates on cement?

3445 The Witness: I have discussed with individuals the distribution of cement on the Great Lakes. The theory which I have, in my mind, absorbed from such conversations is that the transportation by water on the Great Lakes is cheaper than transportation by rail between the same points.

By Mr. Wooden:

Q. Are there some mills located on navigable rivers to which the same observation might apply?

A. Well, as I say, I know of—thinking of the Mississippi River—I know of no rates out there which are lower than the rail-rates. Understand, this is a private deal between the tower and the cement company. There are some cement plants located on or near the Mississippi River that transport a portion of their cement by barge. Do you want them?

Q. Yes.

A. The Dewey Portland Cement Company at Linwood, Iowa.

The Universal Atlas Cement Company at Hannibal, Missouri.

The Missouri Portland Cement Company at Pros-
3446 pect Hill, Missouri.

The Marquette Cement Manufacturing Company at Cape Girardeau, Missouri.

Q. Do they own their own barges or employ public carriers?

A. The Dewey Portland Cement Company recently owned its own barges.

The Marquette Cement Manufacturing Company owns some barges.

The Missouri Company owns some barges, but I believe all of these companies hire other barges at times for various reasons.

Q. Has the industry ever formally gone on record in favor of transportation by water or by truck?

A. Not to my knowledge.

Q. Did not we have a case here last week where the code authority, while you were with it, held that the use of barges constituted a violation of the code because, in effect, it was a diversion?

A. My recollection of that case was that that comment was made concerning a price f. o. b. barge at mill.

Q. Yes, that is right.

A. I do not remember the comment any more than that, but that is what it applied to.

Q. I was asking the other day whether there came up, in the course of discussion about government land
3447 grant rates—whether there were cases brought to your notice where, through the use of the control clause, the non-basing point mills might net more to the business?

A. They might or might not, depending on their location with reference to the destination point.

Q. And were there some cases where it was brought out that they might or would—I mean particular cases?

A. Yes.

Q. In the filings made of the destination prices, can you state, from your general knowledge of the industry, that they were figured from certain basing points?

A. Yes, sir.

Q. There was quite a high degree of identity between the delivered prices at given destinations filed by the different mills, was there not?

A. Yes, that was generally true.

Q. And that, alone, presupposed that they were figured from some common point, did it not?

A. Yes.

Q. Otherwise you could not get an identity of delivered price unless the freight factor were figured in the same manner?

A. That is right.

Q. Was there filed with the code authority at any time a list of basing points?

3448 A. No—you mean a complete list of basing points?

Q. Yes; that is the intent of—

A. (Interposing.) No, sir.

Q. Did any of the mills reporting destination prices state the basing points from which their prices were figured?

A. Occasionally they did; yes.

Q. That was not a regular practice?

A. No, and we had—it was just extra information as far as we were concerned. If they filed a destination price that is what we put on our file cards and advised other members of the industry about.

Q. Did you circulate the information where mills did happen to state the base on which they were quoting?

A. No.

Q. Was the same situation true during the period of the Trade Practice Committee?

A. I presume that it was. You mean as to general uniformity of destination price?

Q. Not that so much as the matter of whether basing point prices were occasionally reported and filed.

A. Well, we got them in frequently under the code and, I presume, that we still did under the open price filing with the Trade Practice Committee.

Q. Now, the code provided, as I recall it—particularly the last amended code—that all price terms should be filed.

3449 A. Yes, and we so interpreted the first code.

Q. You did not interpret that as applying to basing point prices?

A. No, because in my opinion—and I believe in anybody's opinion in the industry—that a price, unless it was so stated, that title to the cement would be transferred at that point—

Q. (Interposing.) In other words, the basing point price—

A. (Interposing.) Is a misnomer.

Q. Nobody could buy at that price, is that what you mean?

A. It was a price base rather than base price unless they so filed it.

3450 Q. And the change might be either above or below it depending on what they sometimes refer to as absorption of freight?

A. It would be below it, would it not?

Q. Well, non-basing point mills, in certain cases, add the freight from the basing point, do they not, to their own locality?

A. Yes, but your question, I believe, was whether it would be above or below a price base. Well, having none, a nonbasing point mill would not be affected in any way.

Q. In other words they would never get the basing point price, but one side or the other of it?

A. They have no basing point price; so, they would get a varying price depending on their own freight rate.

Q. And that varying price that you refer to, is, in terms of varying mill net?

A. Varying mill net, I should have said.

Q. During the time you were in the Chicago office of the Institute, did there go through the office at any time a list of basing points or basing point prices?

A. I do not recollect that there did.

Q. And I understand that is also true for the code period and the trade practice period?

A. Yes. Let me make it plain that I did have knowledge of some of these so-called base prices, but at
3451 no time did we have any reason to use them and, therefore, we had no general list of such base prices.

Q. Did you know of any circulation in the industry of a list of basing points or basing prices?

A. No, I knew of no circulation. I knew that some cement companies, at least, had their own list of price bases which they had collected for their own information, as far as I knew.

Q. Did you ever see any lists which included all basing points and all basing point prices?

A. I have seen lists of cement companies covering all price bases in the territory in which they were interested.

Q. My question was even broader than that.

A. No, I never saw one covering the entire country.

Mr. Wooden: I offer at this time, Your Honor, Exhibits previously marked for identification as 277-P, 277-W and 277-Y. They purport to be copies, or were identified as copies, of correspondence passing between Mr. Reiter and Mr. Warner, of the Colorado Portland Cement Company and were obtained from the files of Mr. Neylan.

Do you recall the correspondence, Mr. Reiter?

3452 The Witness: I remember the correspondence.

Mr. Woodman: I offer the exhibits in evidence.

(COM. EX. 277-P, W and Y was offered and received in evidence.)

3454 Q. Mr. Reiter, directing your attention to Exhibit 277-W—your letter of April 25, 1935, to Mr. Warner—and your statement with reference to a great variation in the costs of manufacturing cement between different mills, how great a variation have you known in that respect?

A. I have no figures on that, Mr. Wooden. I assume that my information in that letter was given to me by members of the indusfry and I accepted their statement as a statement of fact which seemed to be apparent.

Q. Was it also found that there were substantial variations in costs of selling between different mills?

A. There are variations in the costs of selling.

Q. Substantial variations?

A. Again, I have no figures in mind, but I would say that a cost of selling might vary as much as 5 cents

3455 a barrel between one organization and another.

Q. In your experience as sales manager have you found variations in costs of manufacture and in costs of selling as between different mills of the same organization?

A. As to the cost of manufacture, that has never come directly to my attention, but the cost of selling will vary as between mills and as between sales offices.

Q. In other words, between mills belonging to the same concern?

A. That is right.

Q. In this same exhibit you refer to a call made at the Comptroller General's office and a statement that additional facts should be presented to the Secretary of the Interior if you wanted the opinion of the Comptroller General reconsidered. Were those additional facts presented?

A. No.

Q. Can you say why not?

A. Yes. It was my feeling that additional information of that kind would not be well-received by the Secretary.

Q. Was that merely your personal conclusion or was that the consensus of opinion of your associates?

A. We will say it was my personal opinion. I felt I had things to base that opinion on.

Q. Do you remember this letter which I show you and which has been previously identified and marked as 277-Z and AA?

3456 A. I remember receiving this letter.

Mr. Wooden: I will offer it at this time, your Honor. It has been previously identified by Mr. Widman as coming from the files of Mr. Neylan, the writer of the letter. The addressee is the witness.

3457 (COM. EX. 277-Z and AA was offered and received in evidence.)

3458 Q. Mr. Reiter, was it your understanding that when mills quoted destination costs that they used the same base price that they did in quoting a destination or delivered price?

A. That is my understanding, yes.

Q. Then it would follow that the only difference between the two, so far as amount was concerned, was the difference between the commercial rate and whatever

3459 the land grant rate might be that entered into the destination cost.

A. That is right.

Q. I show you a paper previously identified as 277-BB, CC, DD, and EE—correspondence passing between you and an officer of the Monolith Portland Cement Company in July, 1935. Do you remember that correspondence?

A. (After examining papers.) Yes, sir.

Mr. Wooden: I offer these papers for the record, your Honor.

3461 (COM. EX. 277-BB to EE was offered and received in evidence.)

Q. Mr. Reiter, will you tell me if I am wrong in stating that the situation here covered was in essence this, that the Monolith Company filed a destination cost and permitted the Government to deduct the commercial rate therefrom in accordance with the Government invitation and specifications that such would be done, and that as a result, the Monolith Company was 42 cents lower than the lowest Government destination cost? Am I right so far?

A. That is the way I remember it, but that, Mr. Wooden, was contrary to their own filing of the Government destination cost. Your statement however is correct.

Q. And did you point out to them that other bidders declined to allow the deduction of the commercial rate by the Government under those conditions, and required that the land grant rate be deducted in accordance with the control clauses?

A. I did.

Q. Well, a destination cost that was as much as 42 cents a barrel below the price of other bidders, that is a very unusual amount of difference, isn't it? Unusually

3462 large, I mean?

A. Yes, it is quite large. Of course, the freight from Southern California from Monolith, which is in Southern California, to points in New Mexico is quite a high freight.

Q. Even on a land grant basis?

A. Well, roughly it is land grant all the way, therefore roughly your land grant rate is 50 per cent of your commercial rate, which is high.

Q. Does the name H. O. Warner among the list of those to whom copies were sent indicate that his company was the one who had complained about the matter?

A. Probably so.

Q. Does this instance represent a typical case of the way you handled such matter during the regime of the Trade Practice Committee?

A. Yes. I call your attention to the fact that so far as this file is concerned and so far as my memory serves me, there was no conclusion to the case as there was in the Code Authority days.

Q. I remember that the amended code of May 11, 1935, provided for liquidated damages in case of violation. Were liquidated damages ever assessed in any case of violation that you know?

A. No.

Mr. Leisure: I do not see how that is material to

3463 this case, Your Honor, whether liquidated damages were assessed or whether they were not. It can not be material or relevant in this case.

Examiner Norwood: If he knows.

The Witness: I did not complete my answer; that was the first part of my answer. The provision in the amended code for liquidated damages was incomplete except as to form, that is, there was no damages filled in, and therefore it was never operative even under the code period.

By Mr. Wooden:

Q. I show you now papers previously identified as Commission's Exhibit 277-FF, GG, HH, II, JJ, KK, as coming from the files of Mr. Neylan. You are a party to the correspondence that is represented there. Do you remember the matter?

Mr. Leisure: Your Honor, I think the last question presupposed that there was a provision in the N. R. A. providing for liquidated damages in the code. Now as I read that section, and I think it ought to be clear as going along with the question, it is Article 7 which provides for liquidated damages. It simply says: "It is hereby provided that any member of the industry may enter into an agreement with any other member or members of the industry providing for the payment of liquidated dam-
3464 ages or any part thereof upon violation by him of any provisions of the code, provided, however, that such agreements shall become effective and binding upon the parties thereto only after the execution thereof shall have received the consent of the National Recovery Administration."

The Witness: I remember the substance of the correspondence.

Mr. Wooden: I offer these papers in evidence.

(COM. EX. 277-FF to KK was offered and received in evidence.)

3465 Q. Mr. Reiter, just refreshing your recollection by these papers there, will you state the substance of
3466 the situation as you understood it?

A. As I remember it, refreshing my memory from these papers, there evidently were two destination prices on file with the Cement Institute at this time. One of them was f. o. b. cars, New Richmond, Kentucky, and the other one was f. o. b. probably barges, Dam No. 35, in the Ohio River.

Q. Was the latter a quotation that was requested by the purchasing officials? Did they request a quotation f. o. b. barges at the dam you referred to?

A. I never saw a copy of this proposal, but one of the respondents has furnished me with a quotation from that proposal which I can read here.

Q. All right, if that helps out your answer.

A. "Item No. 3 shall be delivered to the United States Engineers, Dam No. 35, Ohio River, f. o. b. cars, government switch at Lock No. 34, New Richmond, Kentucky."

Evidently some of the bidders quoted the price f. o. b. New Richmond, Kentucky, and other bidders quoted the higher price on file, f. o. b. Dam No. 35, the difference being 2 cents a barrel.

The two bidders who quoted the higher price evidently made complaint about the bidders who quoted the lower price, saying that that price was filed f. o. b. the wrong location and my correspondence is based on that information.

3467 Q. Although filed f. o. b. wrong location, it was filed upon request of the purchasing officials for such location?

A. I think not. I think it was a standing file at the time the bids were taken and they bid the price which was on file at that dam, and there were no special filings on this job.

Q. But there was another price filed lower than that and that was f. o. b. barge at the dam?

A. Those were also standing filings, Mr. Wooden. We had filingst of prices for practically all numbered dams in the Ohio River.

Now, as I say, that correspondence does not disclose that price f. o. b. dam was f. o. b. barge or not, and I have no recollection of it.

Q. There was no land grant rate involved in this case, was there?

A. No.

Q. Were not both the prices filed, then, f. o. b. destination—some destination?

A. Yes, sir.

Q. What difference does it make what destination it was just so it was f. o. b. destination?

A. Well, the destination was not the same, Mr. Wooden. One of them was apparently f. o. b. the dam and the other was f. o. b. the nearby town of New Richmond, Kentucky.

3468 Q. And which was the one that was two cents low? The New Richmond, Kentucky, or the f. o. b. the dam?

A. The low one was the price f. o. b. Dam 35, whereas the proposal as indicated by this excerpt which I read was taken f. o. b. New Richmond, Kentucky.

Q. Well, then, if you had added to that the cost of getting the cement from New Richmond to the dam site, the difference would heave been still greater than two cents?

A. Well, I am not familiar with that country down there.

Q. I am not either.

A. There would be a cost of transportation, yes.

Q. In addition to the two cents on the face of it there would be whatever additional cost there was in getting it from New Richmond to the dam site?

A. Yes, I should think it would be more than the two cents.

Q. Do you know what the outcome of that case was?

A. Well, so far as the Cement Institute was concerned, our correspondence with, I believe it was, 11 bidders who had bid below a price, all but one admitted that they had bid contrary to their own filing, but nothing was done, and I presumed that the award was made to one of those 11 bidders who had bid contrary to their own filed prices.

Q. I notice Mr. Neylan wrote you in Exhibit 277-JJ that "We feel if any bidder allows freight in excess of the New Richmond freight rate he is guilty of an un-
3469 fair practice." Was it on that basis that you undertook to take up the matter with the concerns that had bid the lower price?

A. Not at all. I was interested only in the destination prices which were on file.

Q. I can understand that, but I do not understand then why you took the matter up with the parties who had had the lower price.

Q. I am showing you exhibits previously identified as Exhibit 277-LL and MM from the files of Mr. Neylan. Do you recall that exchange of correspondence between yourself and Mr. Duque? (Handing papers to witness.)

A. I don't remember it, but I understand that correspondence.

Mr. Wooden: I offer these papers.

3470 (COM. EX. 277-LL and MM was offered and received in evidence.)

Q. I notice in Mr. Duque's letter to you, 277-MM, he says he based his quotation on the normal mill base received on shipments made to dealers in Southern California, and Arizona and Nevada. If that was the case, what was there about his action that was irregular or open to any exception or criticism by you?

A. The fact that he did not have a price filed with us f. o. b. his mill, and he actually bid a price f. o. b. his mill.

Q. Why wouldn't his normal mill base price have produced a destination price similar to that of others who may have complained in this case?

A. The destination was probably based on some other price base than his own.

Q. But he quoted a mill base price, as I understand you?

A. Yes, but the only—

Q. (Interrupting.) It was not filed?

A. It was not filed. The only thing filed was the
3471 destination prices for those three destinations in Nevada, and they were apparently based on some other price base than the one of Mr. Duque's mill.
3472 The Witness: Shall I answer your question, your Honor?

Examiner Norwood: Yes.

The Witness: In answer to a question by Mr.
3473 Wooden asking what was the objection to this bid of the California Portland Cement Company, I stated that the objection was that that company bid f. o. b. mill price which they did not have on file.

Examiner Norwood: I will ask counsel for the Commission to reframe that question and I think he will make us all happier.

Mr. Wooden: One of the questions I asked Mr. Reiter was that if the California Portland Cement Company had quoted its normal mill base price, what were the objections to that on the part of the others provided the destination price came out even?

Mr. Zimmerman: He has already answered it and stated there was no f. o. b. mill price on file.

Mr. Wooden: I know he has answered that.

Examiner Norwood: Read the question and let him answer it.

Mr. Leisure: How can he know what was in the other mills' minds?

Examiner Norwood: Read the question.

(The question is read.)

Examiner Norwood: Do you know what the objection of the others was?

The Witness: I do not.

Examiner Norwood: They did not make any ob-
3474 jections to you?

The Witness: They did object that apparently the California company bid contrary to their own filed prices.

Examiner Norwood: Did you have any objection to that method?

The Witness: Your Honor, during the code period and this period after the code, which has been described as an interim period—

Examiner Norwood: (Interposing.) Yes.

The Witness: (Continuing.)—my only objections to anything were whether they violated the code or not. That is all I felt I was authorized to deal with.

Examiner Norwood: You considered that that violated the code, of course?

The Witness: It violated the code and the provisions for open price filings.

By Mr. Wooden:

Q. You had in your communications a list of seven concerns which I believe were competitors of the California Portland Cement Company. Did they find that their destination price was higher than the price of the California Portland Cement Company was at destination after the freight was added to the mill price?

A. I do not know, Mr. Wooden. I would presume from the fact that their names were on here—

3475 Examiner Norwood: Finish your answer and I will rule on it.

The Witness: I would presume from the fact that their names were on here that these companies were other bidders on that same project and I had knowledge of that from some source. They may also have been joint complainants to this bid of the California company. I have no recollection of that.

3476 Q. Was there a basing point recognized in southern California at the time of this correspondence?

3477 Mr. Wooden: The question, as amended, will read: "Was there a basing point in southern California?"

The Witness: I do not know.

By Mr. Wooden:

Q. I show you exhibits previously identified and marked as 277-NN, OO, PP, and QQ—copies from the files of Mr. Neylan and representing correspondence between you and various members, I believe, of the Trade Practice Committee and sales people.

3478 The Witness: I have rather a hazy rememberance of these.

(COM. E. 277-NN to QQ was offered and received in evidence.)

Q. Was this a case, Mr. Reiter, where certain bidders acceded to the government's request for a destination price from which might be deducted the commercial freight?

A. Yes.

Q. And that resulted in that case in some of the bidders quoting a price which was more advantageous to the government than others?

A. Well, what the bidder did who was complained against here was again to allow the government to deduct from his bid a commercial freight rate and ship on land grant rate, and I presume therefore that it was to
3479 the advantage of the government to do so. That information is not contained in the correspondence.

Q. That would account for the complaints being made about it by competitors, would it not?

A. Inasmuch as he did not sell to the government at the only price on file for that destination, namely the commercial price.

Q. Well, if as I understood you this morning, the prices to the government included in the government destination cost were the equivalent of the commercial prices at the mill, the only difference being in what freight rate was added, why should not the government deduct a commercial rate from a destination price that was quoted?

A. I call your attention to the fact that this bidder has no price base at his mill. It is a non-basing mill.

Q. Well, we will come to that in a moment, but would you answer the question I just asked you before that?

A. I thought that was responsive to your question. Maybe not.

Q. If so, will you explain how?

A. Probably I had better have your question again.

Examiner Norwood: Read the question.

(The question is repeated.)

3480 The Witness: Well, I still believe my answer is responsive, Mr. Wooden—

By Mr. Wooden:

Q. (Interposing.) All right, will you explain it, then?

A. (Continuing.)—because, having no price base at this bidder's mill, neither their commercial nor land grant rate would benefit respectively the commercial price nor the government destination cost.

Q. It would have been otherwise if it had not been a non-basing point mill? Then, would my question apply pertinently?

A. If it was a mill with a price base, then your comment would apply except he had neither filed a government destination cost nor a price f. o. b. his mill.

Q. But he had filed a destination price?

A. He had filed a destination price; yes, sir.

Q. Which was the equivalent of a commercial price?

A. Yes, sir.

Q. Reference is made here to a meeting which you have had with Captain Collins on August 16. Will you state what that reference is to and who Captain Collins is and what the meeting was about?

A. Well, this is a long story. Do you want it in full?

Q. Make it brief and comprehensive.

A. Captain H. E. Collins was then, as he is now, Assistant Director of Procurement of the United States
3481 Treasury Department in charge of purchases and over a period of time I had a number of conferences with Captain Collins, both with others and by myself. Probably that is sufficient for this time unless you want the whole story of how those conferences were initiated, at whose requests, et cetera.

Q. We will go into some details later, but Exhibit 277-OO, being a letter from Mr. Hunt of the Penn-Dixie to you refers to—he says he "does not find any indications that Captain Cillins actually concurred in our committee recommendations with respect to recognizing certain classes of business being sold by dealers."

Does this particular case involve a quotation to the dealers for resale to the government?

A. Well, it was not involved in the complaint.

Q. I understand that.

A. This respondent now recognizes that according to his own sales policy this cement should have been sold through a dealer.

May I comment further on this statement of our committee's recommendation to Captain Collins, that no committee made such a recommendation to Captain Collins.

Q. Mr. Hunt goes on to say he was wondering whether Captain Collins actually issued the instructions he agreed to issue. What were the instructions he agreed to issue?

A. In this connection I believe Captain Collins did
3482 not agree to issue any instructions. What Mr. Hunt is, in my opinion, referring to there is his desire that Captain Collins advise his state procurement officers that under certain proposals they will receive no bids from cement manufacturers, but bids will be received from dealers.

Now, inasmuch as whether they will or not depends upon the individual sales policies of the cement companies, I never could see how Captain Collins could make such a ruing, each cement company's policy being subject to change without notice, and I never discussed it with him.

Q. Was it not a long-time established policy of the industry to sell government agencies direct without selling the dealers for resale to the government?

A. In large quantities and for certain specific work; in other words, the government allowed or required the contractors or post offices, which were naturally always within cities, to buy their own cement and such contractors were sold by dealers generally.

But it had been a policy of many cement companies, at least, to sell the United States government most of its purchases direct at the dealers' price.

Q. Did that extend to all sales in carload lots to the government?

A. Well, you asked about a long-time policy and, therefore, I cannot answer it.

3483 Examiner Norwood: Was that the dealer some of the time?

The Witness: I beg your pardon?

Examiner Norwood: Was that the dealer some of the time?

The Witness: Well, at this time under discussion, I was informed that certain sales policies, or the sales policies of certain cement companies, did not provide that all carload business would be sold direct to the government.

3484 By Mr. Wooden:

Q. Wasn't that something rather recent at the time, and didn't it represent a change from the previous policy of cement mills in selling the government?

A. I am not sure, Mr. Wooden.

Q. Does the fact that the W. P. A. purchases for emer-

gency relief took on such an important factor in volume about that time, does that bring to your mind anything along the line that I suggested as to whether a new policy was inaugurated about that time?

A. I think I had better tell you the story that I told you was a little long story.

Q. All right.

A. There were two building material dealers associations. The name of one was the National Retail Lumber Dealers Association, and the name of the other was, I believe, the National Builders Supply Association, both of whom were quite active during the code period. In 1935, immediately prior to the end of the Code, probably in April, 1935, an appropriation was made of $4,800,000,000, for emergency relief, and this amount of money was given to the President to spend at his discretion. The dealers' organizations assumed that the Procurement Division of the Treasury Department would buy materials in large quantities and store them at central storage points even
3485 though the materials themselves were used in large quantities and were such as would ordinarily be bought through building material dealers, and they got much interested in the possibility at least of this business being taken away from them, and they communicated with others in the building material business, manufacturers, and so forth, of which I was not one nor the Cement Institute was not one, and as a result of that, a meeting was called here in Washington and it resulted in a luncheon meeting with Harry Hopkins who was the Administrator of the P. W. A., and representatives of these various associations. They discussed the matter with him, and he gave them certain information and advised them to see Admiral Peebles, who is Director of Procurement, and they had a meeting with Admiral Peebles, and he turned the matter over to Captain Collins.

At this time I was advised by the president of the Cement Institute that he had appointed me chairman of a committee to furnish such information to the Procurement Division in this matter as I could. Also about this time a man by the name of Hilts who used to be an officer in the N. R. A. went to the Procurement Division as an assistant for Captain Collins in the Division of Cement Purchases, and he got in touch with Mr. McFadden, our counsel, and suggested that the next time I come to Washington, to

both come down and get acquainted with Captain Collins, which was done. We met Captain Collins with Mr.
3486 Hilts and I think one or two others in the Procurement Division.

At that time Captain Collins told us about some of the information that he wanted for his use in purchasing cement, some of the problems which he foresaw and some of the plans of the Procurement Division for purchasing materials, and these questions were of a nature that I could not answer for the industry, but at the next meeting of the Trade Practice Committee I made a report of this conversation with Captain Collins, and I was then shown copies of individual sales policies of several members there, I was told that by the cut and dry method, these sales policies had become uniform at least through the East and the Middle West, and I was instructed to carry on our discussions with Captain Collins. Then he called a meeting to which I was invited and representatives of the two dealers' associations, to discuss this matter.

Q. And the matter, as I understand it, was what class of trade should be sold direct by the manufacturers and what classes should be sold through the dealers?

A. That is one of the things that Captain Collins was interested in, and we had with us, that is the cement people there had with them one member of the industry who had his printed sales policy which he had distributed, and that was exhibited to Captain Collins, and on that basis the matter was discussed among those present.

3487 Q. Prior to going to Captain Collins with the matter, representatives of the manufacturers and representatives of the dealers had rather thoroughly discussed the subject, had they not?

A. I had talked to the dealers about it. I don't know who else was there. We had been for months in disagreement with our dealers, or at least the members of my industry were in disagreemnt with dealers over many matters, and it was a serious matter to the dealers, I believe, and it was certainly a serious matter to members of the Cement Institute, because these dealers accounted for the sale of something over 50 per cent of all cement shipped.

Q. Even at that time?

A. I think at that time and others.

Q. As a matter of fact, since the depression in 1933, has not the proportion of consumption of cement tended to increase largely, I mean the proportion represented by

government purchases of cement rather than commercial purchases, tended to increase quite largely?

A. Well, of course, Mr. Wooden, during the depression and the rehabilitation program, the amount of cement purchased by the government for government projects greatly increased. However, if you include the purchases for municipalities, counties, parishes and so forth, the cement used on public works was always a considerable part of the cement sold.

3488 Q. As the proportion of government purchases increased during the depression, that carried the possibility that the proportion or amount handled through the dealers would decrease, did it not?

A. Yes, I think that follows.

Q. You mentioned April, 1935, as about the time the mills adopted sales policies describing the methods or classes of trade which would be sold direct and those which were not to be direct.

A. No, you misunderstood me on that. That was the approximate time of the start of these negotiations with the Procurement Division by others. I did not go into it for a month or two. I believe that the adoption of these individual sales policies covered quite a period of time before that.

Q. Of course, purchases by state highway commissions for road construction have always been an important part of the business, have they not?

A. Yes, it had for many years, but many highway state departments have discontinued purchasing their own cement for highways.

Q. And buying it through contractors or buying it from dealers?

A. No; that cement is sold direct either to the state highway department or to contractors.

3489 Q. Well, various mills put out circulars, did they not, stating just what classes of trade would be sold direct and what classes would be sold through the dealers?

A. Yes, sir.

By Examiner Norwood:

Q. Were there not some states where they sold only through the dealers?

A. There was a difference in policy in Texas and there

was a difference in policy in Florida and I have no knowledge of what or little knowledge of what the policy was west in the United States Bureau of Mines' districts 10, 11 and 12.

Q. How about Georgia?

A. Well, I believe that the individual sales policies, as announced, applied to Georgia the same as it did to most of the East and Middle West.

Q. Now, was not this policy announced to your organization and passed on by you to the other mills?

A. Not at all. It was announced to their customers and at the time of which I speak that we had our first meeting with Captain Collins, I had an inquiry as to the state of the individual policies and, for that reason, I could not give information to Captain Collins at our first meeting.

By Mr. Wooden:

Q. According to Exhibit 277-OO—Mr. Hunt's letter to you—he says that if Captain Collins actually issued the instructions he agreed to do they were evidently be-
3490 ing disregarded by the different State procurement officers. What do you understand by that?

A. Well, I understand by that that Mr. Hunt had in his mind that Captain Collins should issue a bulletin to his State procurement officers telling them that in this class of work you should not expect bids from cement manufacturers because that is dealer business and, as I say, these merely being individual policies, which were subject to change without notice, I could not see how Captain Collins could give such information to his State procurement officers and never asked him to do so.

Q. You had seen the individual policy announcements?

A. I had at this time. I inquired about them first after this meeting with Captain Collins.

Q. Were they not all substantially identical?

A. I, by no means, saw the sales policies as announced by all cement companies.

Q. Such as you did see, though.

A. Those that I saw were substantially alike—practically the same.

Q. Did you happen to know whether or not, following those conferences with dealers and with Captain Collins, to which you have referred, that W. P. A. purchases, for the most part, were made through dealers?

A. I think they were, for the most part, and in
3491 making that answer, Mr. Wooden, I am assuming that the cement companies followed their individual, announced policies.

Q. Did you have brought to your attention cases where manufacturers were quoting, nevertheless, on W. P. A. purchases—quoting direct?

A. I think that was done quite a few times.

Q. Did you handle those as complaints of violations of the code or the voluntary code—

A. (Interposing) I am sure that we did not, because it was not a part of the code, although it was nevertheless a violation of the company's own announced sales policy.

Q. How did you handle such matters? Did you handle them as chairman of the Trade Practice Committee?

A. Well, at that time I was chairman of the Trade Practice Committee, but I do not recollect that I handled them.

Q. I believe you said that you had some—

A. (Interposing) Knowledge?

Q. (Continuing)—cases presented to you in the nature of complaints that some manufacturers were selling direct or quoting direct?

A. I do not recall, Mr. Wooden,

3492 By Examiner Norwood:

Q. Were these sales policies announced by you?

A. No, sir, they were announced by the companies themselves to their trade.

Q. Did they announce them to their competitors?

A. So far as I know they did not, but it is the same case as a contractor's notice, Your Honor. Their terms of sale are just as important as the price and they would be picked up in the field by the representatives of one company—that is, one company's representatives would pick up the competitive sales policies as announced, immediately.

Q. Did they file the prices with you?

A. They did file prices; yes.

By Mr. Wooden:

Q. And those filed prices did not apply to sales made to the Government for W. P. A. purposes?

A. Yes, Mr. Wooden. The companies only filed one

price with us. The price was the same on any cement which the cement company sold, whether they sold it to a dealer or a direct purchaser like the government. So, the mere fact we had a price filed with us would not indicate the cement which was sold direct and that which was sold through dealers.

Q. In other words, the announcement of the policy might mean that while that price was filed, it was not applicable to a certain class of business?

3493 A. That is correct.

By Examiner Norwood:

Q. Did they file any scales of prices that varied with varying quantities?

A. No, they have never done that. The prices filed by the members of this industry—I will put it this way: The members of this industry, during the time of open price filing, filed no quantity discounts, if that is what you mean, although they apparently did file special prices for particular jobs that required a large quantity of cement.

By Mr. Wooden:

Q. During the N. R. A. code period, did you have a systematic reporting of land grant rates, or was that handled with regard to particular projects as they arose?

A. We had no filings of land grant rates as such until, I believe, late in December, 1935, or early in January, 1936.

Q. At that time, did you begin publication or compilation and publication of land grant rates?

A. Yes, sir, as soon as we had sufficient on hand.

Q. Prior to that time, how was the land grant rate matter handled? How had it been handled?

A. Well, it was not handled by us at all, Mr. Wooden, either in the Code Authority or in the Cement Institute.

Q. Well, in the case of bids on particular projects, didn't you do more or less work in the Code Au-

3494 thority as to the land grant rates involved?

A. We did none.

Q. Well, you put out some circulars in the spring of 1934 relating to the control clause and the use of land grant rates for Government destination cost purposes, didn't you?

A. Yes, sir.

Q. Didn't you have in connection with such things as the Grand Coulee Dam bidding and the Fort Peck bidding

and similar projects, information filed with you as to the land grant rates involved?

A. In the Fort Peck bidding, the proposal carried the land grant rates; I know that. And I may have been advised—I certainly was advised of some land grant rates—but there was no handling of them by us, no collection of the information, and it was merely incidental to our work. We did not distribute any information on land grant rates.

Q. Now, in the case of the Bonneville Dam letting, wasn't there quite a disturbance over the first bidding on that because of some, not all, the bidders using the same land grant rate factor?

Mr. Leisure: Your Honor, I do not see how this witness can testify whether or not there was a disturbance.

Examiner Norwood: He can answer if he knows.

3495 Mr. Leisure: Those were filed bids.

Mr. Wooden: The records are here, that is the exhibits are in evidence relating to it. I do not have access to them right at this moment.

Examiner Norwood: Objection overruled.

The Witness: My reply would necessarily be based on filings made at that time with the code authority, and I remember that there were a number of different prices filed, and the thing that sticks in my memory is that on one of the lettings, cement companies bid a price or a Government destination cost on file, whatever its effective date, and the Code Authority took some action in connection with that.

By Mr. Wooden:

Q. And the first bids were rejected?

A. That is right.

Q. Because of a violation of the code, were they not?

A. I believe so.

Q. Will you identify the papers marked Commission's Exhibit 753-A and B as authentic reproductions of an exchange of telegrams between the Oregon Portland Cement Company and the Code Authority?

The Witness: I believe those letters are authentic. I recollect a little of them. I am sure they are au-

3496 thentic.

By Mr. Wooden:

Q. Your initials appear on one of them as the author?

A. That is right.

Mr. Wooden: I offer them for the record.

Mr. Leisure: If Your Honor please, these two exhibits are telegrams which were sent not after the code period but during the code period, and they are not binding on anyone in this case and we object to them.

(COM. EX. 753-A and B was offered and received in evidence.)

Q. I notice in the reply made to Mr. Neylan's Exhibit 753-B, you informed him that he would be in violation of the code irrespective of the ruling of the Comptroller General. What was the ruling of the Comptroller General referred to there?

A. I am not sure without checking these dates, Mr. Wooden, but—well, I can not answer that. This date does not mean anything to me.

Q. Perhaps the answer is here in Exhibit 753-A, a communication to you of a ruling of Comptroller General McCarl in which he states "It is no violation of the code
3497 to bid Federal Government price less than those in published price let."

A. Well, I don't recollect any ruling by the Comptroller General like that.

Q. I think that was one to the effect that, in words of general application, in a statute, it had no application to the sovereign, or something along that line, and therefore the Federal Government was not in the same category as the other purchasers?

A. Oh, I do remember that too, and he changed his mind after that, or at least it was decided that the code applied to government purchases.

3498 Q. As a matter of administrative policy?

A. Well, I believe so.

Q. Not as a matter of strict law?

A. I would not be able to comment on that.

Mr. Wooden: I think the same rule has been held to apply under the Robinson-Patman Act.

By Mr. Wooden:

Q. Exhibit 753-C for identification, Mr. Reiter, purports to be a copy of a letter of yours to the sales manager of the Southwestern Portland Cement Company, March 12, 1934. Will you accept it as an authentic document? (Handing paper to witness.)

A. (Witness examining paper): Yes, sir.

Mr. Wooden: I offer it.

(COM. EX. 753-C was offered and received in evidence.)

3499 Washington, D. C.,
Wednesday, February 16, 1938.

3500 Mr. Smith: These papers are tendered in response to the subpoena served on Mr. Crapo, Vice-President of the Huron Portland Cement Company, one of the respondents, and are tendered under the same conditions and objections and observations as were made when the 3501 first papers were produced.

Examiner Norwood: Yes.

Mr. Smith: No. 1 is a mimeographed copy of the minutes of the meeting of the board of trustees of the Cement Institute held August 15, 1933.

Examiner Norwood: How many sheets does that comprise?

Mr. Smith: Fourteen sheets.

Examiner Norwood: Mark them for identification 754-A to N.

Mr. Smith: Minutes of the meeting of the board of trustees held December 5, 1933—5 sheets.

Examiner Norwood: Mark them 755-A to E.

Mr. Smith: Minutes of the meeting of the board of trustees held December 7, 1933—4 sheets.

Examiner Norwood: Mark them 756-A to D for identification.

Mr. Smith: Minutes of the meeting of the members of the Institute, Districts 1 and 2, held September 12, 3502 1934—7 sheets.

Examiner Norwood: Mark them 757-A to G, for identification.

Mr. Smith: Executive letter dated May 27, 1935, executive letter No. 52—1 sheet.

Examiner Norwood: Mark it for identification 758.

Mr. Smith: Letter dated June 11, 1935, on the letterhead of the Cement Institute, addressed to all members, signed by Mr. Reiter, Chairman of the Trade Practice Committee—2 sheets.

Examiner Norwood: Mark it for identification 759-A and B.

Mr. Smith: Letter on the letterhead of the Cement Institute, dated July 10, 1935, entitled "General letter re Government purchases"—2 sheets.

Examiner Norwood: Mark that 760-A and B for identification.

3503 Mr. Smith: General letter re Trade Practice Plans, dated June 11, 1935, on the letterhead of the Cement Institute—4 sheets.

Examiner Norwood: Mark that 761-A to D for identification.

Mr. Smith: Letter addressed to all members of the Cement Institute, dated March 19, 1936, entitled "Executive Letter No. A-9, Re pending legislation, including anti-basing point bill"—3 sheets.

Examiner Norwood: Mark it 762-A to C for identification.

Mr. Smith: Executive letter A-49, on the letterhead of the Institute, dated November 1, 1936, re Protest Against Government Construction of Cement Plant in Porto Rico —6 sheets.

Examiner Norwood: Mark it 763-A to F, inclusive, for identification.

Mr. Smith: Executive Letter A-68, dated June 11, 1937, on the letterhead of the Cement Institute—5 sheets.

3504 Examiner Norwood: Mark it 764-A to E for identification.

(Each document thus produced was marked for identification as indicated by the directions of "Examiner Norwood."

3504 HERBERT H. RICE was thereupon recalled as a witness on behalf of the Commission and, having been previously duly sworn, testified further as follows:

Further Cross-Examination.

By Mr. Zimmerman:

3508 Q. Now, on that file, the government asked for bids and asked for a sum which might be deducted from the prices quoted in order to determine a mill price, did they not, so that the bids ran that way?

A. I have not read these papers through, but the specifications here provide that this cement should be delivered to the particular location. They are asking for delivery bids.

Q. That is right. But take a look at the bids. Or look at page 7 of the specifications; you may find the language there, I think. The language that I have reference to is as follows: "In consideration of purchase f. o. b. cars at mill, the following amounts may be deducted from the prices quoted." Have you that language there; you find it do you not?

A. That is right.

3509 By Mr. Zimmerman:

Q. And that was the basis upon which the bids were solicited by the Government and the bids made by the various companies? Is that so?

A. That is correct.

Q. How many bidders were there?

A. Thirteen.

Q. And did not all thirteen of the bidders comply with this request so as to give f. o. b. mill prices?

A. From the notations on this abstract I would say that they did, generally.

Q. And that included Marquette?

A. Yes, Marquette bid both ways.

Q. Now, by the method used by the Government in the solicitation of bids, they were asked for and obtaining destination cost bids, were they not?

A. I do not know whether you call it destination cost. I suppose you would. They asked for bids delivered to these various locations and then they asked what deductions would be made if accepted at the mill.

Q. If you will look at page 4 of the abstract—what does it show with reference to the award? You may, if you like, state it in substance, or read it.

A. It says "Award recommended: Marquette Cement Manufacturing Company, No. 11, for all lots f. o. b.
3510 their mills."

Q. There is no question but that the Government got the full benefit of the Government land grant rates there, was there?

A. I do not believe I could answer that without knowing the amount of the Government land grant rates. This bid made certain deductions if taken at the mill. Whether that is the commercial or the land grant rate I do not know.

Examiner Norwood: What deduction, if any, did they

allow from the delivered price? Was that the regular control clause?

Mr. Zimmerman: They set forth specific sums.

The Witness: They have here a tabulation at the bottom. Then it states:

"In consideration of the purchase f. o. b. cars at the mill, the following sums may be deducted from the basic prices quoted above."

Those basic prices quoted above are delivered prices at five different locations and then each bidder put in what amounts could be deducted from those delivered prices.

Examiner Norwood: And those sums were supposed to approximate the land grant rate?

The Witness: I think it was hoped that—

Examiner Norwood: Or approximate the figure
3511 which would effect the land grant rate saving?

The Witness: That was what was anticipated.

Mr. Wooden: This was for delivery in Louisville?

The Witness: Yes, sir; about five points in the Louisville district.

Mr. Wooden: Are you sure that the land grant rates are involved?

The Witness: That would depend on the location of the mill.

Mr. Zimmerman: Look at the abstract or your figures and maybe you can tell.

Examiner Norwood: They are involved in the bidding if there was a mill close enough to ship to this job which is on a land grant road.

Mr. Wooden: That is the question—whether it is on a land grant road.

The Witness: They have notations here under Item C, of each individual bid.

By Mr. Zimmerman:

Q. When you say "they" whom do you mean?

A. The District prepared it and they have notations like this:

"Exact land grant rates on Lots 1, 2 and 3 not known" but the abstract states that wherever the land grant rate is known, that has been placed under Line C.

3512 Q. Now, Mr. Rice, you said awhile ago that there were notations on the bid in language as follows:

"In consideration of purchase f. o. b. cars at the mill, the following sums may be deducted from the basic prices quoted above."

That language was supplied by the Government, was it not?

A. That is right. That is in the printed form.

Q. All right. Let us take up the next one, date of which is November 18, 1927—another Louisville engineers department purchase—the amount being 17,000 barrels. How were the bids asked for on that job?

A. Well, under Paragraph 1 of the Specifications, they asked for bids for furnishing and delivering the cement.

Q. Now, do your files show what the engineers figured—

A. May I continue a moment?

Q. Certainly. I beg your pardon.

A. On the back of the schedule they have the same provision for a deduction which may be made if purchased f. o. b. mill located at ——— and then there is a blank.

Q. You mean the same provision which we discussed previously—"In consideration of the purchase f. o. b. cars at the mill, the following sums may be deducted from the basic prices?"

A. That is right.

3513 Q. So again they were asking for a destination cost, and then deduction to arrive at mill price?

A. That is correct.

Q. Now, do your files show what the Engineers estimated the cost per barrel f. o. b. mill would be?

A. The abstract here has the statement that the original estimate for this cement was $2.00 per barrel f. o. b. mill.

Q. To whom was the award made?

A. Marquette Cement Manufacturing Company.

Q. At what price f. o. b. mill bid?

A. Approximately $1.95. Do you want me to carry it all the way through?

Q. No, I do not care for that.

A. Approximately $1.95.

Q. F. o. b. La Salle or Cape Girardeau?

A. I suspect that is La Salle.

Q. I do not think it is material. They bid f. o. b. both their mills, didn't they?

A. That is right.

Q. Now, there were other companies besides La Salle that bid f. o. b. mill in this instance, were there not? A number of them?

A. Apparently so. From the abstract I would say that is correct.

Q. Now, let us pass on to the next instance.

3514 Examiner Norwood: What was the date of that?

By Mr. Zimmerman:

Q. Will you give the date?

A. The date of opening of bids is November 11, 1927.

Q. Now, I think we got out of order as to date, because the next one I asked for is dated April 14, 1927, the United States Engineers' office at Chicago and 9,800 barrels involved. Now, let me ask you, Mr. Rice, if in that instance only delivered prices were asked for in the first instance?

A. Under this abstract here, I would say only delivered prices were solicited.

Q. In this instance, Mr. Rice, will you make a search for other bids and figures in addition to the abstract which is the only part of the file that you have been able to find so far, and ascertain if it is not true that on May 10, 1927, a contract was made with Marquette pursuant to their offer to deliver the cement f. o. b. cars at La Salle or Oglesby, the location of their Illinois plant. Will you undertake to include that also in the letter which you are to write to us?

A. Yes.

Q. Thank you. The next instance asked for is August 9, 1928. That was a Mississippi River project, and

3515 the amount involved being 25,000 barrels. Did not Marquette bid f. o. b. mill on that or f. o. b. government barges at their Cape Girardeau mill?

A. The District Engineer reports also in that case that they were unable to locate any papers on that.

Q. All right. We will pass that one then. The next instance is dated August 20, 1928, 60,000 barrels, Mississippi River, first and second districts. What is the fact as to whether or not Marquette bid f. o. b. mill on that?

A. I have a record here, Mr. Zimmerman, of 240,000. The date of opening is July 26 instead of August. Are you referring to the date of the contract in your question?

Q. Yes, I am referring to the date of the contract rather than the date of the opening.

A. I guess this is the same.

Q. The important thing is not so much the exact date, but whether or not an f. o. b. mill bid was made.

A. There was an f. o. b. mill price.

Q. By Marquette?

A. By Marquette. From their mill at Cape Girardeau.

Q. As a matter of fact, there were 12 bidders, and 10 out of the 12 bid f. o. b. mill, did they not, Mr. Rice?

A. That is right, except that I think there were 13 bidders.

Q. Thank you very much; I am glad to have that correction. Now, the next one is April 2, 1929. The des-
3516 tination is Chicago, and the amount involved is 3,400 barrels. There again the government in asking for bids, using the language in substance as follows: "In consideration of purchase f. o. b. cars at mill, the sum of blank dollars and blank cents per barrel will be deducted from the basic price quoted above," did they not?

A. I have no way of verifying that. I only have a copy of the abstract. The abstract would indicate that deductions were made.

Q. So that the government did get how many bids in all?

A. Six.

Q. And how many of them were f. o. b. mill prices?

A. They have a net price at the mill opposite each of the six bids.

3517 Q. That would indicate, therefore, that they got that many mill prices, I presume?

A. Or some method of computing it.

Q. You do not have the specification there with you?

A. No, sir.

Q. The next item is June 3, 1929. The amount involved is 175,000 barrels and the destination or the department is Memphis; that is, the U. S. Engineer's Office at Memphis. You have the abstract there before you?

A. Yes, sir.

Q. How many bidders were there?

A. Twelve.

Q. Did Marquette bid f. o. b. mill on that job?

A. They did.

Q. There were many of the other bidders who bid likewise, were there not?

A. That is correct.

Q. Who got the award?

A. The abstract bears the notation "Accepted bid No. 3."

Q. Who is that?

A. That is the Marquette Cement Manufacturing Com-

pany, for delivery f. o. b. cars Cape Girardeau and f. o. b. Government barges, Cape Girardeau.

Q. The next item is December 17, 1929, Mississippi River, First and Second Districts.

3518 (Discussion off the record.)

By Mr. Zimmerman:

Q. Well, the important thing is not the exact date, but whether or not Marquette made an f. o. b. mill bid.

A. The abstract shows that they did.

Q. And there were, in all, how many bidders?

A. Sixteen.

Q. And how many of them bid f. o. b. mill?

A. All but one.

Q. Let us take the next instance, which is April 17, 1930, Third Mississippi River District, Vicksburg office, 1,200 barrels. Do you have that one?

A. I do.

Q. What does that show as to whether Marquette bid f. o. b. mill?

A. The abstract shows that they bid both f. o. b. mill and f. o. b. Monroe, Louisiana.

Q. Did any other bidders bid f. o. b. mill?

A. Yes, I believe the other eight did.

Q. Thank you. The next is May 5, 1930, 7,000 barrels, Chicago.

A. I do not have that either, Mr. Zimmerman.

Q. That is not available?

A. No, sir.

Q. All right; let's pass that. The next is Febru-

3519 ary 18, 1930.

A. I have that one.

Q. That is just a little bit of a one, is it not—300 barrels?

A. Yes.

Q. Did Marquette quote f. o. b. their mill at LaSalle?

A. They did.

Q. I do not know whether there were any other bidders or not. Were there?

A. There were five other bidders and only one of the other bidders other than Marquette bid f. o. b. shipping point.

Q. Now, June 9, 1930. That is Rock Island.

A. I have that.

Q. What does that show as to whether Marquette bid f. o. b. mill and how many barrels were involved?

A. Marquette bid f. o. b. mill. There were eight bids altogether and a total of three bidding f. o. b. shipping point.

Q. The next is June 16, 1930. That is the Third Mississippi River District, Greenville, Mississippi, 50,000 barrels. Have you those files?

A. I have those, Mr. Zimmerman, but according to my check, there was one in between which is pencilled in your record—No. 14—which I do not have. Yes, I beg your pardon. That is my error.

3520 Q. Yes, I think you have it. I think we went over it before.

A. Yes, I have this one for 50,000 barrels.

Q. What is the fact as to whether Marquette bid f.o.b. mill on that?

A. They did bid f.o.b. mill.

3521 Q. How many bids were there in all?

A. Eleven.

Q. And did they all bid f.o.b. mill or only part of them?

A. All of them bid f.o.b. mill.

Mr. Zimmerman: In that instance, you were looking for one where the Missouri Portland bid f.o.b. mill, Mr. Wooden, the other day.

The Witness: In this particular case, Mr. Zimmerman, Missouri Portland bid allowing a deduction. They did not give us an actual mill price; they gave us a figure from which we could determine a mill price.

By Mr. Zimmerman:

Q. In order to arrive at the mill price?

A. Yes.

Examiner Norwood: They all did that where they had the control clause, didn't they?

Mr. Zimmerman: No. The government in a great many instances asked for delivered prices, and then asked what amount would be allowed to be deducted in order to find the mill price. Sometimes they did it that way and sometimes they asked for straight f.o.b. mill bids as an alternate delivered price. Perhaps Mr. Rice can illustrate

3522 it.

The Witness: We asked for f.o.b. mill prices on this (indicating) but in this case (indicating) we did not put in an f.o.b. mill price but we put a figure in to be deducted.

Examiner Norwood: And with a formula for finding the mill price?

The Witness: Yes.

Mr. Zimmerman: In other words, the bidder in that instance had used the kind of formula that the government had used in some of these previous bid forms.

By Mr. Zimmerman:

Q. June 20, 1930, Missouri River, first and second districts, the amount involved being 100,000 barrels. Did Marquette bid f.o.b. mill on that letting?

A. The abstract shows that they did.

Q. And there were how many bidders?

A. Ten.

Q. How many of them bid f.o.b. mill?

A. Six.

Q. The next is August 1, 1930, 1,300 barrels, United States Engineers' office, Louisville, Kentucky. Do you have that file?

A. I have that one.

Q. And what does that show with reference as to 3523 whether or not Marquette bid f.o.b. mill?

A. They did a mill price figured by deduction as provided in the printed form.

Q. How many other bidders were there and how many of them also bid f.o.b. mill?

A. There were 7 bids received, all offering certain deductions to figure a mill price.

Q. As requested?

A. That is right. As provided for in the printed form.

Q. Now, October 28, 1930, United States Engineers' office, Vicksburg, 1,500 barrels. State whether or not Marquette bid f.o.b. mill on that?

A. Marquette bid f. o. b. mill under that advertisement.

Q. How many bidders were there in all?

A. Eleven.

Q. Did any of the others bid f. o. b. mill?

A. The abstract shows that they all bid f. o. b. mill.

Q. February 4, 1931, Mississippi River, first and second districts, 12,000 barrels. Did Marquette bid f. o. b. shipping point on that?

A. They did.

Q. How many bidders were there in all?

A. Nine.

Q. How many of them bid f. o. b. mill?

A. The abstract shows 5 out of the 9 bid f. o. b. mill.

3524 Q. The next one I have here seems to be February 10, 1931.

A. That is the one I have.

Q. Mississippi River, Third District, 1,500 barrels. Is that right?

A. That is right—1,500 barrels.

Q. How did Marquette bid on that?

A. f.o.b. mill.

Q. Any other bidders who bid f. o. b. mill?

A. The abstract shows all except one out of a total of twelve bidders bid f. o. b. mill.

Q. And that was—was that a cement company?

A. I do not know. The name is the Perry Lime & Cement Company, Monroe, Louisiana.

Q. Let us go back to No. 20, of February 10, 1931. How was the award made in that case?

A. The award was made to Bidder No. 9. Bidder No. 9 is the Arkansas Portland Cement Company, the third low bidder as to price f. o. b. contractor's mill, but who was the lowest bidder as to price after adding freight at government rates to prices quoted f. o. b. contractor's mill, making his proposal the lowest as to price delivered at Monroe, Louisiana.

3525 Q. In that matter the contract was let on the basis of the lowest delivered cost, was it not?

A. That is correct.

Q. That, as a matter of fact, is the method of determining the awards in most instances in your department, is it not?

A. Yes, sir; we are concerned principally with getting the article at destination at the lowest price.

Q. That is right. Now, have we had the one of March 31, 1931? I think not. Do you have that?

A. I have that one here now.

Q. All right. That is 6,500 barrels in the Chicago District?

A. That is right. I have only the abstract on that.

Q. Does that show whether Marquette bid f.o.b. mill?

A. This abstract shows deductions for delivery f. o. b. mill.

Q. That, again, is where the Government uses the

clause which is, in substance "In consideration of the purchase at cars at mill, the sum of blank cents per barrel will be deducted from he prices quoted above?"

A. I should say it was. Without the invitation I am not sure.

Q. Were there other bidders that bid a mill price?

Three of the four bidders allowed deductions. The others were the Universal Atlas Cement Company, and the Medusa Cement Company.

3526 Q. That is, those were the ones who did not—

A. No; those were the ones who did, as well as Marquette.

Q. Oh, I beg your pardon. June 26, 1931, U. S. Engineers, Memphis. The amount involved is 240,000 barrels. Have you that file?

A. This is June 11, 240,000 barrels.

Q. As a matter of fact, I believe the total was 330,000 barrels, was it not? There were 240,000 barrels in one lot and 90,000 barrels in another.

A. I think that is correct, although I do not notice it on the abstract for the moment.

3527 Q. How many bidders were there in all?

A. There were 8 bidders.

Q. Did Marquette bid an f.o.b. mill price?

A. They did.

Q. How many of them bid f.o.b. mill?

A. All of the other bidders, Hermitage Portland Cement Company, Universal Atlas, Dewey, Alpha, Missouri, Lone Star, Marquette and Kosmos.

Q. The next is October 13, 1931, Mississippi River, third district, 1,500 barrels. Do you have that file?

A. I have that one.

Q. Did Marquette bid f.o.b. mill on that?

A. They did.

Q. Were there any others that bid f.o.b. mill?

A. Lehigh, Trinity, Marquette, Alpha and Penn-Dixie. Five out of the six.

Q. October 15, 1931, Mississippi River, first and second districts, 60,000 barrels. Do you have that file?

A. I have.

Q. Did Marquette bid f.o.b. mill on that or f.o.b. government barges at the mill?

A. They bid f.o.b. mill.

Q. How many bidders in all?

A. Four.

Q. How many of them bid f.o.b. mill?

3528 A. The abstract shows that all of them did, Universal, Kosmos, Hermitage, and Marquette.

Q. The next one is November 11, 1931. Have you that one?

A. That is another 60,000 for Memphis.

Q. All right. November 11, 1931, 60,000 barrels, Mississippi River, first and second districts. Do you have that file?

A. I have that.

Q. How did Marquette bid on that?

A. They bid f.o.b. cars at the mill.

Q. How many bidders?

A. Two bidders.

Q. Did the other bidder bid f.o.b. mill?

A. The other bidder was the Universal Atlas. They struck out the words "at mill" and bid f.o.b. cars at Ruthersville, Missouri.

Q. Now, I think we are ready for April 11, 1932. That was the Second Chicago District, the amount involved being 9,000 barrels?

A. I have that file.

Q. Now, that asked for delivered prices with the amount that might be deducted in order to arrive at a mill price, did it not?

A. That is correct.

Q. Did Marquette bid a mill price there?

A. They did.

3529 Q. How many bidders in all?

A. Six.

Q. How many of them bid f.o.b. mill?

A. All; Alpha, Lone Star, Marquette, Medusa, Universal and Lehigh.

3530 Q. The next one is June 14, 1932, First and Second Mississippi River Districts, the amount involved being 400,000 barrels. Did Marquette bid f.o.b. shipping point on that?

A. They did.

Q. Were there any other bidders that bid f.o.b. mill?

A. There were five other bidders—Pennsylvania-Dixie, Hermitage, Alpha and Missouri Portland and they all bid f.o.b. mill on one or more items. They did not bid f.o.b. mill on all items.

Q. Did Marquette bid f.o.b. mill on all items?

A. I think the record shows they did.

Q. The next one is August 25, 1933. I believe that is the Nashville District. There were 20,000 sacks or 5,000 barrels involved. How did Marquette bid on that?

A. They bid f.o.b. mill.

Q. State the number and how many of them bid f.o.b. mill.

A. Thirteen bids received and twelve bid f.o.b. mill.

Q. The next is September 20, 1933, 120,000 barrels, in the Memphis District. Is that the next one?

A. I have that one.

Q. How did Marquette bid on that?

A. They bid f.o.b. cars and f.o.b. barges at shipping point.

Q. How many other bidders were there and how
3531 many bid f.o.b. shipping point?

A. There were nine other bidders.

Q. How many bid f.o.b. shipping point?

A. They all bid f.o.b. shipping point on one or more items. Marquette bid f.o.b. shipping point on all items.

Q. Right. Now, the next is November 14, 1933, 30,000 barrels, first and second Mississippi River districts. How did Marquette bid on that as to whether or not they bid f.o.b. shipping point?

A. This is November 14, 1933?

Q. Yes, sir.

A. They bid f.o.b. shipping point on that.

Q. How many bidders were there and how many bid f.o.b. shipping point?

A. There were three other bids and they all bid f.o.b. mill by one or both methods—f.o.b. cars or barges, separately.

Q. Marquette bid both ways, did they not?

A. Yes, sir.

3532 Mr. Wooden: What do you mean by both ways?

The Witness: We were asking for f.o.b. cars and f.o.b. barges at the mill.

By Mr. Zimmerman:

Q. The next item is January 19, 1934 and January 24, 1934, 7,000 barrels for Wilson Dam, and I think you told me—

A. (Interposing) That has nothing to do with us. We checked it.

Q. And found it was not in your department?

A. It was not ours.

Q. The next is April 3, 1934, Vicksburg, the amount involved being 4,000 barrels?

A. I have that.

Q. How did Marquette bid on that job, as to whether or not they bid f.o.b. mill?

A. They bid f.o.b. mill.

Q. How many bidders were there in all and how many of them bid f.o.b. mill?

A. There were 12 bids altogether and the abstract shows that they all bid f.o.b. mill.

Q. How was the award made?

A. The award was made to bidder No. 5, the lowest bidder as to price. Bidder No. 5 was the Arkansas Portland Cement Company.

Q. Did you say the lowest bidder as to price or
3533 the lowest bidder as to destination cost?

A. The lowest bidder as to price. That lowest bidder appears on the abstract under the caption "Gross Cost Delivered."

Q. That is what is meant then by "Price?" They used "price" there the same as the lowest destination cost, is that correct?

A. That is correct.

Q. The next is June 28, 1934, Memphis District, 130,000 barrels being the amount involved?

A. I have that.

Q. Did Marquette bid both ways, that is, both cars and barges, f.o.b. mill shipping point?

A. They did.

Q. How many bidders were there and how many of them likewise bid f.o.b. shipping point?

A. There were three other bidders, none of whom bid f.o.b. cars or barges at the mill.

Q. The next one is May 10, 1935, Memphis District, 100,000 barrels. The date that I gave you there may be the date of the contract. The letting may have been April 29, 1935.

3534 Q. I think you might make a statement for the record. As to the item of 130,000 barrels which you just referred to, were there two instances there shown in your files where there were f.o.b. mill bids, both applying to the same letting, but one of them being the original solicitation of bids and the other being a re-letting?

A. There were original bids opened on June 7, 1934. There were four bids received, and only one bidder submitted proposals f.o.b. cars or barges at the mill.

Q. Who was that?

A. That was Marquette.

Q. Yes.

A. All bids were rejected and the requirement was re-advertised.

Q. Then what happened?

A. Under the re-advertisement, the same situation occurred, that is only Marquette bid f.o.b. cars or barges.

Q. And there was a letting under that, was there?

A. And the award was made to Marquette for 130,000 barrels of cement.

3535 By Mr. Zimmerman:

Q. Now, let us go on. Are we now ready for the April 29, 1935, bid?

A. That is right.

Q. That involved 100,000 barrels. Is that right?

A. That is correct.

Q. Did Marquette bid f.o.b. mill on that or f.o.b. shipping point?

A. They bid f.o.b. Government barges at contractor's plant.

Q. Were there any other bidders that bid likewise?

A. There were none.

Q. The next is July 8, 1936—53,000 barrels. Did Marquette bid f.o.b. shipping point on that?

A. They bid f.o.b. Government barges at contractor's plant. There were two other bidders, neither one of whom submitted any proposal on that basis.

Q. Now, just as a matter of interest, look at page 2 of the specifications as to the manner of comparing bids. What was the provision?

A. Just what paragraph do you have in mind?

Q. What is the provision as to how the bids will be compared to arrive at the award?

A. The various bids received will be compared on the basis of the ultimate total delivered cost to the Gov-
3536 ernment of cement on board Government barges at Bulletin Bar, Arkansas.

Redirect Examination by Mr. Wooden.

Q. Mr. Rice, you have abstracts of all the bids that you have just gone over with Mr. Zimmerman?

A. Yes, sir.

Q. Are they all here?

A. They are all in this file (indicating). In a couple or three cases there are no bids, but there are abstracts for all.

3538 The Witness testified that "The first" covers bids opened April 10, 1935. That contains six pages. That document was marked for identification as Com. Ex. 765-A to F; the second abstract is for 48,000 barrels, opened February 25, 1927. That contains four pages. That document was marked for identification as Com. Ex. 766-A to D; "The next one" is for 17,000 barrels of cement, bids opened November 11, 1927. That abstract contains two sheets. That document was marked for identification as Com. Ex. 767-A and B; "The next" is April 3539 14, 1927, containing one sheet. That document was marked for identification as Com. Ex. 768; "The 3540 next one" opened July 26, 1938, one sheet. That document was marked for identification as Com. Ex. 769; "The next one," opened April 2, 1929, one sheet. That document was marked for identification as Com. Ex. 770; "Opening June 3, 1929, one sheet." That document was marked for identification as Com. Ex. 771; "Opening December 17, 1928, one sheet." That document was marked for identification as Com. Ex. 772; "April 17, 1930, one sheet." That document was marked for identification as Com. Ex. 773; "Opening February 18, 1930, one sheet." That document was marked for iden- 3541 tification as Com. Ex. 774; "Opening June 19, 1930, one sheet." That document was marked for identification as Com. Ex. 775; "Opening June 16, 1930, one page." That document was marked for identification as Com. Ex. 776; "Opening June 20, 1930, two pages." That document was marked for identification as Com. Ex. 777-A and B; "Opening August 1, 1930, one sheet." That document was marked for identification as Com. Ex. 778; "Opening October 28, 1930, one page." That document was marked for identification as Com. Ex. 779; "Opening February 4, 1931, one page." That document was marked

for identification as Com. Ex. 780; "Opening Feb-
3542 ruary 10, 1931, one page." That document was marked for identification as Com. Ex. 781; "Opening March 31, 1931, one page." That document was marked for identification as Com. Ex. 782; "Opening June 11, 1931, one page." That document was marked for identification as Com. Ex. 783; "Opening October 13, 1931, one page." That document was marked for identification as Com. Ex. 784; "Opening October 15, 1931, one page." That document was marked for identification as Com. Ex. 785; "Opening November 11, 1931, one page." That document was marked for identification as Com. Ex. 786; "Opening April 11, 1932, one page." That document
3543 was marked for identification as Com. Ex. 787; "Opening June 14, 1932, one page." That document was marked for identification as Com. Ex. 788; "Opening August 25, 1933, one page." That document was marked for identification as Com. Ex. 789; "Opening September 20, 1933, one page." That document was marked for identification as Com. Ex. 790; "Opening November 14, 1933, one page." That document was marked for identification as Com. Ex. 791; "Opening April 3, 1934, two pages." That document was marked for identification as Com. Ex. 792-A and B; "Opening June 28, 1934, one page." That document was marked for identification as Com. Ex. 793; "Opening June 7, 1934, one page." That document was marked for identification as Com. Ex. 794; "Opening April 29, 1935, one page." That document was marked for identification as Com. Ex. 795; "Opening July 8, 1936, one page." That document was marked for identification as Com. Ex. 796.

3544 Mr. Wooden: I have one or two questions.

Redirect Examination by Mr. Wooden.

Q. I noticed in some cases in describing these bids, you said they were f. o. b. mill, and in other cases you said they were f. o. b. mill by reason of a stated deduction from the delivered price. Do you remember that?

A. Yes, sir.

Q. Were you careful in all instances to specify where the mill prices were the result of a stated deduction from the delivered price?

A. I tried to be careful and very accurate as to
3545 Marquette since Mr. Zimmerman was directing the questioning, but as to the other bids, unless I examined each one I am afraid the abstract would not show that. I noticed one case, as I recall, where the abstract showed a mill price without showing how it was determined, whether it was a plain figure or the result of a deduction. The only way we could be accurate in each case would be to take each one of those bids and examine the specific bid.

3546 Q. Well, so far as you could from the abstract, as I understand it then, you attempted to distinguish between the mill price that had no other features attached to it, and one that was derived by deducting a stated amount from the destination price?

A. That is correct.

Mr. Zimmerman: May I interrupt just a moment, Mr. Wooden?

Mr. Wooden: Yes.

Mr. Zimmerman: I thought what we tried to do is to bring out where the Government had asked for arriving at a mill price in the way of asking for a delivered price and showing the amount that could be deducted therefrom in order to arrive at a mill price. We tried to point those out.

By Mr. Wooden:

Q. Can you say whether in any of the cases where stated deductions were made from the delivered prices bid, whether that figured back to any common destination price or not?

A. I am afraid I would not know.

Q. To what extent would the abstract permit an answer to that question?

A. Well, there was one case of an abstract there that showed what the land grants would have been. They had that set forth under caption C, and the deduc-
3547 tion that was granted, I think, was under caption B. You might find the answer to it there.

Q. Did any of these cases carry the so-called control clause along with the bids?

A. I don't remember seeing that. I assume you mean the statement that the cement companies have been putting in their bids now when we want an f. o. b. mill price?

Q. No, I mean providing for a Government destination cost price with the deduction of whichever was the lowest rate, the land grant, special or commercial.

A. No, I did not see any of those in those bids.

Q. Would the abstract show those things?

A. It should show anything of that sort, because it was a stipulation that was not in the invitation.

Q. Your previous testimony here was, as I recall it, that beginning about the code period was when you had the difficulty in getting f. o. b. mill price quotations?

A. That is correct.

Q. And prior to that time you were able to get—

A. As far as the record shows, we were generally able to get mill prices prior to the code.

Argument On Motion Re: Subpoenas Duces Tecum Before the Federal Trade Commission.

Federal Trade Commission Building,
Washington, D. C.,
Wednesday, February 16, 1938.

Before:

Chairman Ferguson, and Commissioners Davis, Ayres and Freer.

The Chairman: We are ready to proceed.

Mr. Leisure: With your Honor's permission, I appear on behalf of the Cement Institute, and a group of respondents now appearing in a proceeding which is being conducted in this building. This motion comes up for the purpose of having the Commission determine at our request whether or not certain documents and material is subject to subpoenas duces tecum served by counsel for the Commission in an adversary proceeding.

The material in question consists of certain documentary material prepared by Professors Burns and Clark of Columbia University, and is also of the following character. It consists of answers to a questionnaire which was sent out to various cement manufacturers which were members of the Cement Institute. It also consists of an uncompleted report which Professors Clark and Burns were engaged in preparing. It also consists of certain correspondence running between these two professors and various members of the industry and members of the Institute, and it also consists of certain work sheets which they had, I presume, in preparing their report as they worked.

Now, these subpoenas were served on certain members of the industry, members of the Institute, they were served on the Institute itself, they were served on Professors Burns and Clark.

After this complaint was filed, and when it became necessary for us to prepare the case for trial, we requested Professors Burns and Clark to turn the material over to us and it is now in our possession. I state that in order to make clear to this honorable Commission that we do not raise any point of the fact that although the subpoena was served on the Institute and was served on Professors

Burns and Clark, they do not have actual physical custody of the documents. We make no point of that fact.

It is the contention of counsel for the Institute that all of this material is privileged material and is not subject to a subpoena duces tecum, and we think the law is fairly clear on that point, and the facts upon which we base our contention are briefly as follows:

In 1932, the Price Base Inquiry was issued. Then in the following year, in 1933, the report on the cement industry came out; and it became apparent to any observer that there were serious complaints contained in those books with respect to the cement industry. It became apparent, I should say to anyone, that unless these complaints were in some way answered, that the Federal Trade Commission would in all likelihood take some kind of action with respect to those complaints.

So that at that time, Colonel Donovan, who was acting as counsel for the Cement Institute, took up this question with certain members of the Institute and told them that he thought the time had arrived to make some kind of a survey, that if there was anything wrong in the industry as shown by these complaints, that they should be the first ones to try to correct them themselves and that they should make a survey of some kind and attempt to work cooperatively with the Federal Trade Commission because it might develop that an adversary proceeding would not be necessary.

He also pointed out to them—Colonel Donovan is a soldier and sometimes thinks as a soldier—he pointed to them that if a survey were made and then if adversary proceedings did come later, we would have already gone over the field and would at least have known some of the facts that they would not otherwise know. I suspect it is a little like some of the Navy men are talking today about their armament program for the Navy.

And so this matter was talked pretty generally, but since it was not just one company, this required time to get over the industry. It covered more than thirty-five companies, more than seventy-five members, and those companies were spread from Maine to California, from Florida to Oregon; but the idea did not die and it started to bear fruit. There was a man in Riverside, California, by the name of John Treanor who embraced the idea and embraced it very fervently and started to work on it.

Mr. Treanor early in the following spring, after these books came out, I believe in June if my memory serves me right, called on the Federal Trade Commission and wanted to get their reaction with regard to some kind of a joint survey to be conducted along the lines that I have already described. The purpose was to try to solve some of these marketing problems. Counsel for the Institute felt that progress was now being made, in fact Colonel Donovan wrote a letter on June 19, 1934, encouraging Mr. Treanor in his efforts at cooperation between the Commission and the Industry, and in that letter he discussed the proposed draft of a letter that Mr. Treanor was to send to the Commission, and that letter was sent to the Commission on July 23, 1934.

I mention these things as a background in order that your honorable Commissioners may have clearly in mind that this program of a joint survey which was at first suggested could not possibly have been adopted or have gone forward at all without the advice and consent of counsel for the Institute. I think that must be apparent to everyone.

When I say that Colonel Donovan encouraged Mr. Treanor and was pleased with the progress that was being made, I do not mean to infer that every time Mr. Treanor called on the Commission, he had to call on Colonel Donovan and get his permission to come and see the Commission. But I do mean that just as has been done in all business affairs, that Mr. Treanor had general authority with the advice and consent of counsel for the Institute to try to work out something along the lines that I have suggested here.

As these visits progressed between Mr. Treanor and the Commission, it seemed at first likely that a joint survey, a cooperative enterprise of some kind, could be worked out, but later the Commission decided that this was not the best thing to do, and as I recall, the Commission stated as one of its reasons for not cooperating in a joint enterprise, the expense involved in so doing, and I believe that was one of the reasons stated. I suppose that the Commission may have had some idea that "We have complaints here and now we must be careful and not get ourselves in a position by working with the industry where we can not use a free hand ~~and go ahead~~ and prosecute if we feel in our judgment that an adversary proceeding may be started."

So, the industry went ahead and, with the advice and consent of the Institute and its counsel, Mr. Treanor, conferred with these two professors at Columbia University, feeling that they would be able to make an impartial survey of the kind that was desired, and they were employed.

3559 New York, New York,
Thursday, February, 17, 1938.

3566 WILLIAM J. PLANT, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

I am connected with the sales department of the Universal Atlas Cement Company. My title is assistant to the vice-president, who is A. O. Stark. I have been in that capacity for 8 years. My duties are to endeavor to secure a contact with anybody who is going to put up any type of structure, building, bridges or otherwise in the endeavor to get them to use our product and the territory in which I function is the territory covered by the whole company
3567 go. right out to west, right down south, out as far as we The New York office is a branch office and the main office is in Chicago.

Q. Have you done some work recently with regard to a search of your files in connection with compliance with a subpoena duce tecum served on your company?

3576 Q. I believe you answered the question, Mr. Plant, to the effect that you had been doing some work in connection with the production of papers under the subpoena?

A. That is right.

Q. Will you state what work you have done?

3578 The Witness: Well, the subpoena was read to us and we were given a copy of it to look it over and Mr. Stark asked us to go to work as a group and go through the files in the office there and pick out any papers we thought should be produced under the subpoena.

By Mr. Wooden:

Q. That came within the terms of the subpoena?

A. Yes, that came with the terms of the subpoena.

Q. As you interpreted it?
A. That is right.
Q. Who were the other members of the group?
The Witness: Do you want the names of each one?
3579 Examiner Norwood: Yes.
The Witness: Well, there was Mr. Stark, Mr. Heckendorn, Mr. Allen, Mr. Colter, Mr. Maher, Mr. McCann, Miss Sandbeck,—I may leave out a couple. I have a full list though. Will you read those back?
(The reporter read the names given by the witness.)
The Witness: Then, there was Mr. Nolte, Mr. Glass—I cannot speak for our districts. They have people working on them in various districts.
3580 Q. Was Mr. Allen on it?
A. Yes, sir.
Q. Was Mr. Conner on it?
A. Mr. Connor and Mr. Wells.
Q. Mr. Engesser?
A. Not that I know of.
Q. Are all of these people that you have named connected with the New York office of the company?
A. Yes, sir.
Q. Are they all in the sales department?
A. No, some of them do inside work; the chief clerk and desk work. And most of them are in the sales department. They are all connected with sales, practically.
Q. Which ones are in the sales department? As distinguished from any other department?
A. Which names that I gave?
Q. Yes.
A. Well, there is Glass, Nolte, McCann, Coulter—I don't believe I have called out his name before, who is in the sales department. All but three. Connor and Wells are not in the sales, and Allen is in the accounting department, but attached to the sales office.
Q. Were the files which your group went over, all files here in the New York office?
A. Well, no, they were not. Some of the files
3581 we sent to the mill to the warehouse. We have not got room here for all of our files, and therefore after two years or so we sent them on to the mill in packing cases and store them down there. That is due to lack of space to keep every thing right here in our sales office.
Q. You say several mills are used as storage warehouses?

A. Our own mill.
Q. I mean, you have several mills?
A. We have several mills, but we are only storing our New York files in one mill.
Q. Where is that?
A. Northampton, Pennsylvania.
Q. Did the group then go to the Northampton mill for that purpose?
A. Yes.
Q. For the purpose of going over the files there?
A. Yes, sir.
Q. Did they bring the files back to the New York office?
A. All the files? No.
Q. You brought back merely the selections?
A. The ones that we are supposed to do.
Q. What stage has your examination of the files reached?
A. I would say it has practically finished.
Q. Has it involved a heavy amount of work?
A. It has.
3582 Q. Overtime?
A. Yes, sir.
Q. Night work?
A. Every night.
Q. As well as day?
A. Whatever we could get out so that it did not interfere with our regular work. Sometimes in my own case, I would not be able to get to it until probably 4 o'clock and then worked right through until 10 or 10.30. At the mill, it was different there. We were not bothered with phone calls so that we could concentrate on this job all day long and at night.
Q. Did you work on it week-ends too?
A. Saturday we were out at the mill.
Q. And on Sunday?
A. Of course, we just started with this job a week ago Monday, so that this past week-end that has been included and we worked on Saturday, and as far as I am concerned I did not work on Sunday, I know, and I could not say definitely. Perhaps some of the men did work on Sunday.
Q. Under whose general direction was the work carried on?
A. A. O. Stark.
Q. That is your superior?
A. The vice president, yes, sir.

Q. As I understand it, each member of the group
3583 had a copy of the subpoena, and each member then—
A. (Interrupting.) No. I would not say that. Each head of a department had a copy of the subpoena, and each one that worked on these files first had it read to them carefully, and then we always had a copy of the subpoena with us when we were working, so that we could look over it at any time. They all read the subpoena through, though, to begin with.

Q. Were you able to tell from your files by an index of otherwise whether you had anything in the way of communications with the various people that were named in the subpoena?

3584 Q. What was your answer?

A. I would like to have that question repeated please.

(The question is repeated.)

The Witness: No.

Q. Well, if you want to explain your answer, Mr. Plant, and enlarge on it, go ahead.

A. Well, I am not thoroughly familiar just how these files are kept, not being in the file department, but I would say that the answer is correct as far as I interpret it. As far as that, my answer is correct to your question.

Q. Do you mean that you could not tell whether you had a letter passing to a certain John Smith, for
3585 instance, of some other cement company whose name you have, without going through all of the files in the office to see whether you had a letter with that John Smith?

A. No, I would not state we would have to go through all of the files, we may get a general file and go through it and find something that we did not expect would be on that file. Whether that letter from John Smith would be tabulated on a card index in certain cases, I could not say. It may be attached to a subject-matter file and the subject will be on the outside of the file.

Q. Did you have a subject-matter index?

A. The subject-matter is indexed, yes. To explain it further, we have a lot of files; we have stacks of files on automobiles on salesmen's run. We would not bother with going through those files, and the file clerk would not pull those out at all. But anything of a general character or nature with any of the respondents, we have files on that. In other words, we have a general idea from the files what

we want, and we have gone a little further than our general idea in doing a thorough job.

Q. In other words, you were able to determine in advance whether certain files need to be looked over at all?

A. In a general way we were able to determine that, yes, sir.

Q. And were not the files which you did not need,
3586 to look much more voluminous than those that you felt you did need to look over?

A. Well, I could not say as to that, because I did not check up on all of the files that were not taken out of the file cases or in the cases at the mills, so I could not truthfully answer that question.

Q. Did you have any method of determining so-called border-line or doubtful cases, as to whether they came within the terms of the subpoena?

A. I would not say that we had any method. Everybody was told to use their own judgement. If there is anything doubtful,—if there was something there that we knew should be in accordance to the subpoena, it would be taken out and sent along, and any doubtful cases would be sent along, so that just as Mr. Hershberger says, a lot of papers we sent along that were not used or would not be used. Those are doubtful papers that we did not want to take a chance on turning down ourselves. We thought that somebdy else should decide that.

Q. Were all of these papers selected by members of the group turned over to Mr. Stark?

A. Yes, sir.

Q. Is the work still going on?

A. I would say, as I have said before, we have practically finished. I believe there is about—maybe a hun-
3587 dred thin files, that are doubtful files that we have to go through and will be finished up today, but it is just to do a thorough job that we are going through these extra files. But we are practically finished up. Some of the districts, like the suburban district is finished, and general sales is finished.

Q. How large a volume of material was selected?

A. I could not say as to that because I did not see the final volume of material that was handed over to Mr. Stark.

Q. So far as you were concerned, in your selection how large a volume was there?

A. I could not make a very good guess either. We have been working on this thing so long that according to the

number of the files that I have gone through, the volume was very small. I can put it that way if it would answer your question.

Q. You mean on your own selection?

A. My own selection in comparison to the number of files that I have gone through.

Q. Did you see the volume of selections made by any other firms of the group?

A. Just in individual cases when they would hand over one letter, but I did not see the volume of cases of any other member.

Q. Was there discussion among members of the
3588 group as to whether certain papers should be included?

A. Yes, sir. Doubtful one, somebody would step over and ask Mr. Heckendorn or ask someone else if he thinks that matter should be in or not.

Q. Did you make the examination of the storage files at Northampton, make them right there at the mill?

A. Yes, sir.

Q. And as I understood, you brought back whatever the selections were, you brought them back to New York?

A. That is right.

Q. Was Mr. Stark along at Northampton?

A. No, sir.

Q. Could you see what the approximate volume of the material brought back from Northampton was?

A. The number of letters?

Q. I mean the bulk or the number of letters or any way that you want to put it.

A. Oh, no, I don't know the number of letters. About that much (indicating). I should say, you see, it is hard to gauge.

Q. About four or five inches in height?

A. About three inches.

Q. Did you have any contacts during the course of your selections from the files or discussion about them with respect to representatives of any other cement com-
3589 pany than Universal Atlas?

A. I did not.

Q. Do you know whether any members of your group did so?

A. Do I know of any?

Q. Yes.

A. No, sir.

Q. How long were you at the Northampton mill?

A. I would say we put in about a day and a half, all day Friday, and up until we finished there about noon on Saturday. We left there about 12:30, we left the mill. We worked all day Friday from early in the morning until we quit about 8 o'clock Friday night.

Q. Did you or your group spend some time at the Americus Hotel at Allentown?

A. Yes, sir, we did.

Q. Did you see there any representatives of any other cement companies?

A. No, sir.

Q. You know, I take it who some of them are?

A. I know some of them, yes, sir.

Q. Some of the other company people?

A. I might say that I arrived at Northampton—the group arrived there Thursday night, and I a rived Friday morning, so that I was only at the Americus one night, Friday night, but I did not see anybody that I know
3590 who is with any other cement company.

Q. What became of the material that was tentatively selected and then decided finally that it did not come within the terms of the subpoena?

A. That was tentatively selected?

Q. Well, I mean this. I understand there were some cases of doubt where the person making the selection was in doubt about it.

A. We turned all of that over to Mr. Stark.

Q. And any decision regarding which things should remain among the selections and which should not was left to him?

A. We turned them all over to him. After that I could not say. I don't know what happened then to the material.

Mr. Wooden: Your Honor, I would like to temporarily excuse the witness at this time.

Examiner Norwood: You will remain in the room.

The Witness: Stay in the room?

Examiner Norwood: Yes.

Cross-Examination by Mr. Hershberger.

Q. Mr. Plant, when you were talking about an
3593 examination of the files out at Northampton, as I understand it, you were referring to storage files and not the current files?

A. Storage files.

Q. I want to make that clear. In other words, that was only a part of the files?

A. That is right.

Q. What period did that cover?

A. We were not interested in anything prior to the first of January, 1933; so they covered 1933, 1934 and a part of 1935, I believe.

Q. And when you indicated in your direct examination to Mr. Wooden, that you had practically finished, what you meant to indicate, of course, was merely the work you were concerned with. You do not know whether there has been an opportunity for Mr. Stark or counsel to go over the papers you selected?

A. I am talking about my own work.

Q. When did you receive your subpoena to come here, Mr. Plant?

A. I should judge about ten-fifteen or ten-twenty this morning.

Q. And who served that upon you this morning?

A. Well, there were three gentlemen out there and I do not know exactly which one of those three gentlemen handed me the subpoena. I just walked out in the reception
3594 hall and said "I am Mr. Plant," and someone handed it to me.

Q. Was the subpoena complete at that time or was something written into it after it was handed to you?

A. No, it was complete at that time so far as I know.

Q. Do you have the subpoena with you?

A. No.

3595 Q. Mr. Plant, this examination that you have talked about of the files had only to do with the New York office, did it not, and the files from the New York office?

3596 A. Yes, sir.

Q. In other words, it had nothing to do with the branch offices of Universal Atlas—in Boston, Albany, Pittsburgh, etcetera?

A. No, sir.
Q. Nor with the main office in Chicago?
A. No, sir.
Mr. Hershberger: I guess that is all.

ALFRED O. STARK, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

I am vice-president of the Universal Atlas Cement Company and operate exclusively in the sales. I have
3597 been in the present position since August 1st and prior to that I was sales manager for two and a half years, and prior to that assistant sales manager for about eight years.

Q. Have you had charge of the examination of the files for the purpose of producing documents in response to a subpoena duces tecum of the Federal Trade Commission?
A. Only with respect to the New York office.
3598 Q. Will you state what you did in discharging that particular function?
Q. Will you answer the question?
A. Will you ask the question again?
Mr. Wooden. Read it, please.
(The question is repeated.)
The Witness: I asked numerous employees on our floor in the building to devote their time to a complete searching of all of the records available in the office for the period called for in the subpoena. They performed
3599 just in that fashion, took out all of the file cabinets, all of the records, and looked through each individual paper, and those that came within the scope of the subpoena, as we understood it, we laid aside and held for furnishing to our attorney.

By Mr. Wooden:

Q. How nearly complete is that work at this time?
A. I would estimate—I am not in a position to give that information accurately, but I would estimate that the work is now approximately 70 or 75 per cent completed in the New York office.
Q. Is the group that has been working on it still turning over material to you?

A. They did up to the day before yesterday, yes.

Q. What is the reason they have not continued since the day before yesterday?

A. Since the day before yesterday, the mechanical work of the type of files that we have is pretty well finished. However, there are other types of files that require more or less personal attention on my part or certain individuals more acquainted with that class of work than the routine system, and that is the work that is following now and falling principally on my shoulders and on the shoulders of a few others that are more or less familiar with it.

Q. Do you have a system of indexing individuals or subject-matter which enables you to quickly determine whether you have anything with those particular individuals or concerns or subject-matter? 3600

A. Yes, there is a system of indexing, but I am personally not thoroughly familiar with it. I have never delved into filing systems or watched the real mechanics of the filing routine. I do, however, know how I handled files, what I call for and what I get, and, if it is on a subject, I get the subject, and I assume that that is the way the system is run.

Q. Is that the way the whole group working on the files functioned in this matter by calling on the file room for certain files relating to certain subjects and files of certain individuals or companies?

A. We did that at the outset, and our files were placed out of the cabinets for study.

Q. And selection were made from them?

A. Selections were made from them. Subsequently we went through all of the files for that period, not knowing where some document may have found its way.

Q. When you sal "all of the files", do you mean all of the files in the office, or all of the files of the sales department, or what?

A. All of the files of the sales department.

Q. After you got through or exhausted the material called for under the index or subject-matter index, what amount of the other files remained to be gone over in the way you indicate? 3601

A. Mr. Wooden, I can not answer that because I do not know.

Q. Can you say what the relative volume between the two classes was?

A. Yes, purely as an estimate I would say 15 per cent as against 85 per cent.

Q. Which way?

A. 15 per cent as we considered called for in the subpoena, and 85 per cent not called for.

Q. Well now, perhaps we do not understand each other there. I am referring to the files which you examined in the first instance to make your selections from, whether the ones on which you had an index reference, what proportion they formed of those or in proportion to those which you later went over constituting other files?

A. It is very difficult for me to answer, because there are several more individuals working on this, and I was not right at their side throughout the entire performance. I am not sure.

Q. How large a quantity or volume of material did you select as coming within the terms of the subpoena?

A. In numbers of papers, or in files, or just how do you want it?

Q. Put it both ways.

3602 A. Numbers of papers, I do not know. I would say offhand there would be several hundred that have been gone over as coming within the terms. Then there is quite a stack still to be gone through which I would say is approximately a foot high of papers that deal with various subjects, such as the Cement Institute and matters of that character that are still to be completely gone through.

Q. Have you made the final selection of what material came within the terms of the subpoena and that which did not?

A. Only in so far as I could interpret it. I has not been finally done, no, sir.

Q. It has not been finally done as to any of it?

A. It has been partilly done but not finally done.

Q. What proportion of the material that others selected have you decided did come within the terms of the subpoena and what proportion did you decide did not come within its terms?

A. I would say approximately 50 per cent each way.

Q. Did you ever discuss among the members of your staff who were working on it as to whether particular papers came within the terms of the subpoena?

A. Yes, sir.

Q. And were you the one who made the final decision on such matters?

A. In many cases, yes.

3603 Q. What became of the papers which you decided did not come within the terms of the subpoena?

A. They are all held in one group. They have not been re-filed.

Q. You mean kept with the papers that you did decide come within the terms of the subpoena?

A. On a separate pile.

3604 Q. Did you compare notes at any time with representatives of any other concern about the correspondence that may have passed between them?

A. No, sir.

Q. You knew, I take it, that other concerns were working on similar subpoenas?

A. I do not know. I assumed so.

Q. You did know it?

A. I assumed so. I had no direct word on it.

Q. Did you go to Northampton and examine storage files there?

A. No, sir.

Q. Were you in Allentown last week?

A. No, sir.

Q. Did you know of any contact which members of your staff had with any other cement concern?

A. No, sir.

Q. Was there someone that was in charge of the group that did go over to the Northampton mill?

A. Well, he was not assigned to be in charge, but he was a sort of leader.

Q. Who was that?

A. Mr. Heckendorn.

Q. Do you know whether or not he had any contact with any other cement concern representatives?

A. I do not know.

3605 Q. Do you know of any comparison being made between the results obtained from the examination of the files of any concern other than the Universal Atlas?

A. No, sir.

Q. Have the selections which you have made of the papers coming within the terms of the subpoena been reviewed by any higher officials of your company?

A. Yes—within the last 24 hours.

Q. By whom?

A. Mr. Fred Stone.

Q. Are the papers in his possession?
A. Yes, sir.
Mr. Wooden: I think that is all, Mr. Stark.

3606 *Cross-Examination by Mr. Hershberger.*

Q. Mr. Stark, when you spoke about going through the sales files and you were practically finished, you meant, of course, that to apply only so far as your own examination was concerned and did not mean it was a final determination of what was to be proffered under the subpoena?
A. That is correct.
Q. When you said the files were principally sales files, there were also traffic files that came under your examination?
A. Not under my examination.
Q. They were examined by someone else?
A. They were examined by someone else; yes, sir.
Q. You talked about an index. Mr. Wooden asked you a question several times with respect to an index—whether you could not go to an index and, from the index, determine when you had written a letter to some individual and when you received a letter from some individual. Tell us what the index is?
A. We cannot determine from any index the receipt or the mailing out of an individual communication. We may, for instance, have a subject file on a
3607 project in New York City. All papers with respect to that individual project would find their way to that file. That is all I meant by an index to a file. The correspondence that is in that file is not indexed.
Q. It is now shown on the index in any way?
A. No, sir.
Q. The only way you can tell whether there are letters from the people or corporations mentioned in the subpoena is by going over the papers in that file individually and looking at them?
A. Exactly.
Q. One other question: When did you receive your subpoena to come here today?
A. On the fifth of February—you mean to come here this morning?
Q. Were you subpoenaed this morning?
A. Yes; I received that subpoena this morning about nine-fifty.

Q. Who handed you that subpoena?
A. It was handed to me by one gentleman that came with Mr. McDonald.
Q. Was he Mr. MacIntyre?
A. No, it was not Mr. MacIntyre.
Q. Do you see the gentleman in the room?
A. Well, I saw him.
3608 Q. Do you see him now?
A. No, sir; he is not in the room at this time.

3609 *Redirect Examination by Mr. Wooden.*

Q. In the course of your examination of the papers that were selected from the files pursuant to the terms of the subpoena duces tecum, did you at any time destroy or cause any of them to be destroyed?
A. No, sir.
Q. I understand then that there has been no destruction of any document that was taken from the files in response to these subpoenas, so far as you know?
A. You mean—may I ask for an explanation of that question?
Q. Yes.
A. Do you mean with respect to any papers called for within the subpoena, or do you mean—
Q. (Interrupting.) Any papers at all.
A. Any papers at all? Yes, there were some pa-
3610 pers destroyed.
Q. Why were they destroyed?
A. Well, it just depended on what the individual paper comprised. In a case, for instance, of some personal correspondence that involved some question, some subject not related to the subpoena in any respect, was thrown away.
Q. Why was any such material selected from the files in the first place?
A. It was not selected. The files were gone through completely from beginning to end and these papers all read in the process of searching for the material wanted, and oft-times some paper of more or less of a personal nature may have been taken out and thrown away.
Q. Were there any cases where it was more or less of a personal nature that also related to the matters covered by the terms of the subpoena?
A. No, sir.

Mr. Wooden: That is all.

3611 Examiner Norwood: Recalled for further examination.

By Mr. Wooden:

Q. Do I undrstand, Mr. Stark, that some papers which you described as of a personal nature were destroyed before they reached Mr. Stone or anyone else?

A. Yes.

Q. Before they reached you?

A. No. That is in so far as my knowledge is concerned.

Q. How large a quantity of such papers was that?

The Witness: Thirty perhaps, or forty as I estimate.

By Mr. Wooden:

3612 Q. Did you discuss with anyone in your organization whether such papers should be destroyed?

A. No, sir.

Q. All on your own initiative, and responsibility?

A. Yes, sir. I may add too for clarification an explanation, that in our system of filing, we oftentimes have the same paper on four files, in other words, duplicates.

Q. There is nothing very unique about that, is there? It is quite common?

A. Yes.

Q. How were the papers destroyed that were destroyed?

A. Torn in half and thrown away.

Q. In the wastebasket?

A. Yes.

Q. Are you a lawyer, Mr. Stark?

A. No, sir.

Q. Just passing as a layman on the terms of the subpoena when you undertook to compare the papers you had before you with the terms of the subpoena?

A. As a layman, yes.

Mr. Wooden: That is all.

Recross Examination by Mr. Hershberger.

Q. Mr. Stark, you did have an opportunity to go over with counsel the terms of the subpoena and study it, did you not?

3613 A. Yes, sir.

Q. Before you began your investigation of the files?

A. Yes, sir.

Q. And were you given any instructions by counsel as to whether any papers should be left out that came within the terms of the subpoena, or whether any papers should be destroyed?

A. No, sir, it was understood clearly that we were to keep everything, every paper that came within the terms of the subpoena and furnish it.

Mr. Hershberger: That is all.

WILLIAM R. HECKENDORN, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

3614 I am sales manager with the Universal Atlas Company in charge of the New York Division: New England, New York and New Jersey. I am immediately under Mr. Stark.

3615 Q. Are you under Mr. Stark in your organization?

A. I am.

Q. Are you immediately next to him?

A. Yes, sir.

Q. What is your title?

A. Sales manager.

Q. Have you done some work recently with reference to an examination of the files of the Universal Atlas Portland Cement Company to provide material to be submitted in response to a subpoena duces tecum of the Federal Trade Commission?

A. Yes, sir.

Q. What did you do?

A. Well—

The Witness: I have assisted in going through files from January 1, 1933 to July, 1937, taking out correspondence relating to the 14 questions in the subpoena

3616 and in the correspondence to or from the names listed in schedule C of the subpoena.

Q. Did you personally examine files for that purpose?

A. Yes, sir.

Q. How did you go about ascertaining which files should be examined?

A. Well, we went through the whole list. We have examined all the files that had any connection at all with the subjects mentioned.

Q. Files of the sales department or division?

A. Yes, sir.

Q. Who assisted in that work?

A. A number of people from our own organization—the group mentioned in the subpoenas which were presented this morning.

Q. Will you name them?

A. Yes. Mr. Stark, myself, Mr. Plant, Mr. Maher, Healey, Nolte, Allen, Colter, McCann, and Glass. I do not think I have missed any.

Q. Were you in active charge of the other members of the group you have named?

A. No, sir.

Q. Who was?

A. Mr. Stark.

Q. Did you personally pass on questions as to 3617 whether or not certain papers selected by other members of the group did come within the terms of the subpoena?

A. Yes, sir.

Q. Did you sometimes rule out papers as not coming the terms of the subpoena of those selected by the members of the group?

A. Yes, sir.

Q. What became of such papers?

A. They are still on the files.

Q. In the files?

A. Yes, sir.

Q. Are they segregated?

A. Yes. They are not taken off the files, however.

Q. What volume of such papers was there in comparison with the papers that you determined did come within the terms of the subpoena?

A. Oh, not more than 2 or 3 percent, as nearly as I can judge.

Q. Were any of the papers selected from the files by members of your group destroyed?

A. No, I should say not.

Q. None at all?

A. Nothing that had any relation to the subjects in the subpoena.

Q. Even though members of your group selected 3618 it with the idea it did have?

A. Let me understand that question. Will you put that again, please.

Q. Even though members of your group making the examination selected papers with the idea that they did come within the terms of the subpoena or might?

A. No, I would not say so; in other words, all the papers that were taken off the files that related at all to the subpoena were put in the one lot that were turned over to our attorneys.

Examiner Norwood: Were any of the papers which were selected by anybody as possibly coming under this group, destroyed?

The Witness: No, sir. Any of the correspondence relating to these subjects that came to my observation, that related to the subjects in the subpoena and to the correspondents named in schedule C were retained, and have been submitted to the attorneys.

By Mr. Wooden:

Q. Do I understand from you that there were some papers of some character during this examination of the files that were destroyed or not?

A. Yes, sir.

Q. What were they?

3619 A. Oh, they were some notes from individuals to others within our own company that came to my attention at the time—probably 8 or 9 of them altogether—that we destroyed because they had no bearing on the subpoena and there was not any particular point in retaining them in the files.

Q. Did you leave New York in connection with your work on the files?

A. Yes, sir.

Q. Where did you go?

A. To our Northampton, Pennsylvania, mill.

Q. Did other members of the staff who were working on it go along?

A. Yes, sir.

Q. How many of them?

A. I think there were nine of us altogether.

Q. Where did you do your work?

A. In the office at the Northampton mill.

Q. How long were you there?

A. We were at the mill office from last Friday morning until just after noon on Saturday.

3620 Q. Were selections made from the files in storage at Northampton?

A. Yes, sir.

Q. Did you take any files from the New York office when you went over to Northampton?

A. No, sir. We took nothing except the subpoena and the list of packages and cases so that we could locate the files we were after.

Q. Were the selections that were made from the files in the New York office, did they ever leave that office?

A. Not that I know of.

Q. How sure are you of that?

A. Well, I am not sure. The papers that we took from the files were accumulated in one batch and turned over to, I believe, Mr. Stark's office, so that our attorneys could get them when they called for them.

Examiner Norwood: Will you read the question and answer prior to this last one, Mr. Reporter?

(The question and answer are read.)

Examiner Norwood: Very well; proceed.

By Mr. Wooden:

Q. Did I ask you whether you brought back selections from Northampton, from the Northampton mill to New York?

A. Yes, sir, we did.

Q. Where did you stay when you were over at the
3621 Northampton mill?

A. At the Americus Hotel in Allentown.

Q. While you were there, did you at any time have any contacts with any representative of any other cement concern?

A. No, sir.

Q. And you know, I take it, other sales representatives of other concerns?

A. Yes, sir.

Q. How near were you at the Americus Hotel to any other cement concern?

A. Well, the Lehigh Portland Cement Company's office I believe is on the square, I think about a block away. I think their office is on 7th Street. I am not positive.

Q. Did you see any representatives of the Lehigh Company while you were over there on that occasion?

A. Yes, sir.

Q. Who?

A. I saw Mr. McKenna of the Lehigh Portland Cement Company at the Lehigh Valley Railroad for about one minute as he got off the train.

Q. Any other?

A. No, sir,—let me correct that. There was another Lehigh man with him whom I did not know, whom I was not introduced to.

Q. I take it then that you had no meeting or conference with any representatives of the Lehigh people?

3622 A. None whatever.

Q. With regard to any of these papers?

A. No, sir.

Q. Did you go over any of the files that contained Mr. Stone's correspondence?

A. Well, as I recall there was some correspondence from Mr. Stone included in the letters that we withdrew from the files and which were submitted to our attorneys.

Q. Correspondence of Mr. Stone with parties named and specified in the subpoena, I suppose?

A. Yes, sir.

Q. How many such papers were there?

A. Oh, I would not be able to say. As I recall, there were very few that Mr. Stone was involved in.

Mr. Wooden: That is all.

Mr. Hershberger: No cross-examination.

3624 JOHN ALLEN, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

I am chief clerk in the accounting department of the New York office of the Universal Atlas Cement Company. I have charge of the activities that are carried on in New York in the accounting department which is accounts receivable, sales sheets writing, claims, sacks, cashier, billing and charging. I am office manager which brings me into the sales department so far as the moving of the desks and handling of the files of the department, depart-

3625 ment of personnel and etc. I am in charge of the files of the sales department. I have held that position about 3 months and have been with the company 9 years.

Q. Did you have anything to do recently with the examination of the files of the company for the purpose of producing papers in response to the subpoena duces tecum of the Federal Trade Commission?

A. Yes.

Q. What did you have to do with it?

The Witness: Well, I checked over the files—that is, I checked over part of them with the rest of the boys,—to find a letter of any description that was mentioned in the subpoena—subjects that were mentioned in the 3626 subpoena and the respondents that were mentioned in the subpoena.

By Mr. Wooden:

Q. Did you have a list or copy of the subpoena so that you might refer to it?

A. It was on the table.

Q. And did you personally examine the files in that connection or were you in a sort of supervisory capacity?

A. Well, there was no real supervision needed outside of following through. The file clerk would get out the particular file we called for and feed them to us as we wanted them so not to flood us with too much work at any time, and at the same time get them back in order at any time, and I examined the files with the rest of the boys to see about the letters.

Q. Did you indicate to the file clerk the files you wanted to examine?

A. Yes, we did.

Q. And they were brought to you?

—A. They were brought to us; yes, sir.

Q. What files other than those which you indicated you wanted the file clerk to produce, were examined?

A. She produced all of the files we examined.

Q. My question is whether they were all files which were called for by description or whether you went into 3627 other files than the particular ones which you actually called for her to produce or called for the file clerk to produce?

A. We checked right down the line except the I's and J's which means the whole file, except the I's and J's.

There was no need to check them. They do not have any connection with it. They are inquiries about jobs.

3628 Q. Did you have a subject index to go by?

A. Oh, yes.

Q. Did you also have an index of parties, persons or concerns with whom communications passed?

A. We do not have that on an index except as the file is indexed and cross-indexed, but it is on subjects, and if we write on a certain subject, we take that file out.

Q. Did you have a cross-index by names of parties?

A. Not exactly that. The cross-index means that a paper in that file might refer to some other subject, and we cross-index it so that we can find it on either file.

Q. If you had a communication with John Doe, would that be filed under John Doe or according to the subject-matter of the Communication?

A. The subject-matter.

Q. And would there be any index by which you could ascertain whether you did have something with John Doe?

A. No, I don't think there would be.

Q. You would have to depend on the subject index entirely?

A. Well, if John Doe wrote on a certain subject, we would find it under the subject in the files, because when we got down to that file we would run down to where John Doe was shown, if it was on a certain job, and we would find that job there quickly and it would be under his name.

3629 Q. Suppose you did not know what subject he had written on, and you were looking for something from John Doe, where would you find it?

A. Oh, well, if anything is going to be cranky to find, there is a little card record there that we record it on, and if shows—if the letter is important or anything like that, we would find it on a certain file.

Q. You would have no record of it under John Doe?

A. Not to my knowledge. Of course, I am not a file expert.

Q. You are generally familiar with the filing system though I take it?

A. Oh, yes, I have been familiar with it for a good many years, but not as far as having done the filing myself or anything.

Q. What did you do with the papers which you selected from the files?

A. Put them in a basket on the desk.

Q. And what became of them then?

A. They were taken by Mr. Stark.

Q. Did the papers selected by any other of the staff pass through your hands?

A. No, except that I put them in the vault at night before we went home. They were in the basket and I put them in the vault. I did not examine those papers after they went into that basket.

3630 Q. How large a quantity of papers did you handle when you put them in the vault?

A. Well, it was about that high (indicating).

Q. That means what? Eight or ten inches?

A. Yes; about eight inches, I would say.

Q. Eight or ten inches in height?

A. Yes.

Q. Was that the maximum volume put into the vault any night, or did it vary from time to time?

A. Well, there were papers that came after I put them in the vault when I left for Northampton on Thursday night to check at the mill, and how much there was after that I would not know, but I do not think there was so very many, because we had progressed quite some in New York before we left.

Q. How large was the volume of material selected from the Northampton files?

A. Oh, I don't think there was a dozen papers came up from there with the exception of a couple of files that we thought we would bring up to New York to look at. We did not feel that we should take anything out of there because there wasn't anything that referred to this subpoena.

Q. You mean you brought that file, that whole file down, or what?

A. We brought the file, yes.

Q. Was that file examined by you or any of them?

3631 A. I looked over that file.

Q. And did you decide that there was nothing in it that came within the terms of the subpoena?

A. There was nothing in it that I could see.

Q. Did you discuss from time to time with other members of the staff who were working on the same job, questions as to whether certain papers came within the terms of the subpoena or not?

A. Yes. A person would come over to you and say "Do you think this does", and we would say "Yes" or "No".

Q. Were you acting as a reviewer and did what you said go on that, or what?

A. No, sir. It just happened the boy that was next to you or the one that was across from you would come to you to get your opinion.

Q. You did not make any decision with regard to that?

A. No authority on it, no.

Q. Where did the papers go?

A. It was thrown in that basket which was in the center of the table.

Q. Where did they go from there?

A. Well, each night I put them in the vault until I went away on Thursday night, and when I came back, Mr. Stark had them.

Q. Did Mr. Stark discuss with you whether or not
3632 any of them should be classed as coming within the the terms or without the terms of the subpoena?

A. No, sir.

Q. Will you amplify your answer, Mr. Allen, as to how many papers in bulk or volume came from the Northampton files?

A. Well, I did not handle them; that is, there was nothing that I took off the file down there, but there were some papers that came from the other boys, and they went over to Mr. Plant, and he had them in a basket there and wrapped them up and brought them home.

Q. And how much was there?

A. Well, from my observation there, there did not appear to be a dozen or maybe 20 or 10, right in that, you know. You know when papers are thrown in a basket, you can not judge the number that is there.

Q. Plus, as I understand it, the general file of some sort that you brought along?

A. Well, that file as I recollect it rightly, was on foreign cement, and I looked at it and said there was nothing in it, and then we decided we would bring it home and maybe Mr. Stark would see something in it that he felt should be taken out in accordance with the subpoena.

Q. Do you know whether he did?

A. I don't know.

3633 Q. Did you know that any papers selected by you and other members of the staff were destroyed by any one?

A. Destroyed?

Q. Yes.

A. Nothing was destroyed—not to my knowledge. Well, we had definite instructions that we were to get those papers out of the files and into that basket and nobody was going to destroy anything.

Q. You do not know what became of them after they left your desk or your basket except they got into the hands of Mr. Stark?

A. No, sir.

Q. Did you have any contact with representatives of any other cement companies during the time you were working on those papers?

A. No, sir.

Q. Or at the time that you were over at the Northampton mill?

A. No, sir.

Q. And Allentown?

A. No. I heard the gang say that there was a man down there but I did not see him. I did not know he was there. He was not at our mill. He was at Allentown in one of the hotels. He was probably on business there. He was a salesman. That is the only man mentioned during the whole period.

3634 Q. Who was that?

A. I think somebody said McKenna was in Allentown.

Q. Who is he?

A. Well, he works for Lehigh.

Q. How did that come up in connection with your work over there?

A. Well, we went to the hotel—I think it was the first night we got in there—and somebody said McKenna was in town. That is my recollection of it. That is all there was to it. I suspected that he might be down on the same kind of job we were on, but nobody saw McKenna or any other cement man down there, so far as I know, and I did not even think of it any more.

Q. What position did McKenna hold with Lehigh?

A. I do not know. I think he is the advertising man.

Q. Did you work with Mr. Heckendorn in examining the papers?

A. Yes.

Q. Did all of your party return from Allentown at the same time?

A. Well, they went home Route 22 and I went home Route 24 so as to drop me off at my home at Montclair.

Q. Who is "they?"

A. The Heckendorn gang. Colter, Allen, Maher and McCann came in the other car. Heckendorn was the last.

Q. You never used railroad transportation?

3635 A. No, we went down in a car and came back that way.

Q. Did any of your party remain over at the time you left Allentown?

A. No, sir.

THOMAS WALTER GLASS, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

I am a district sales manager for the suburban district for the Universal Atlas Cement Company. That 3636 territory comprises Connecticut, Westchester and Putnam Counties, a part of Queens County, Nassau and part of Suffolk, L. I. I have been with the company since 1910.

Q. Did you have occasion, recently, to do some work in connection with examining the company's files with a view to producing documents under a subpoena duces tecum by the Federal Trade Commission?

A. Yes, I did.

Q. Will you describe just what you did in that connection?

A. Well, I just—

3637 A. I went through the files in my district.

Q. Was that the full extent of what you did?

A. Yes. I don't know—I might have looked at some others, but mostly my district.

Q. Did you make selections from them as coming within the terms of the subpoena?

A. I took out some papers.

Q. You turned the papers over to whom?

A. To the general office up in the building there.

Q. To whom, to what individual?

A. I don't know. To Mr. Stark maybe. I don't know.

Q. How long did it take you to go through your district files?

A. I would say about 36 hours or something like that.
A. Do you mean 36 hours of continuous effort?
A. No, different times. I did not work straight through; I worked at different times on it. I was out on the territory.
Q. How large a quantity of papers did you turn over?
A. I think I only had about seven papers.
Q. About seven papers?
A. Yes.
Q. In approximately four years time? Did you have a four years period?
A. I went back into 1933, I believe.
3638 Q. 1933?
A. Yes.
Q. Did you have the files in the New York office for that whole period?
A. Yes, of the papers that were out.
Q. I meant the papers covered by the district of which you were in charge.
A. Yes.
Q. You had them all here for that period of time?
A. Yes, those that I picked out were.
Q. Can you say what those papers related to?
A. They were circular letters. I think four or five were from building material associations of Westchester County, ane one of them was a circular letter from—what is his name—an individual up in Buffalo connected with the New York Mason material people.
Q. Did you select any papers that related to the matter of foreign cement competition?
A. To the matter of what?
Q. Foreign cement competition.
A. No, I did not have any on that.
Q. Do I understand that you did your work alone in the selection as distinguished from others who were working on the files in another part of the office?
A. They brought the files into my room and I
3639 went over them there.
Q. You did not work along with the other men like Mr. Hackendorn?
A. Yes, I did for two days.
Q. You mean you worked right with them?
A. Yes.
Q. In the same room?

A. In the same room, yes. Well, I worked in my own rooms, and then with them.

Q. Did you make the trip to Northampton?

A. Yes.

Q. Did you make selections there from the files?

A. We had to go back into the years that we did not have in the office here.

Q. Storage files?

A. Yes.

Q. Were the selections which you said numbered only seven or eight in number, did they include the ones which you got at Northampton?

A. There was only one thing in Northampton, just one circular thing that I took out. That was all in Northampton.

Q. Did you confine your work in Northampton to merely going over the records of your district?

A. My district.

Q. Did you see anyone at Allentown connected 3640 with any other cement company?

A. In Allentown?

Q. Yes.

A. Connected with anybody else?

Q. Yes.

A. No.

Q. Did you ever have any talk with anyone connected with other cement company about the work you were doing in connection with these subpoenas?

A. No, sir.

Q. Did you have any written instructions as a guide to assist you in going over the files for selecting papers?

A. All I read, I read that affidavit (indicating), and I took out anything—

Q. (Interrupting) You mean the subpoena itself?

A. The subpoena.

Q. Did you have any oral instruetions from any of your superiors as to how you were to handle the matter?

A. No, I was told under that (indicating). I read that (indicating) and took out the papers that would relate to that (indicating).

Q. Did you have any difficulty in determining at times what was called for?

A. In that (indicating).

Q. Yes.

3641 A. I got a pretty clear definition of it.

Q. Do I understand you did have some oral instructions regarding how to proceed?

A. Well, I was told to go over my files and anything pertaining to these particular things, why, to take them up.

Q. From whom did your instructions proceed?

A. Mr. Stark.

Q. Is that the total of the instructions you received from Mr. Stark—what you said?

A. Yes—to go through the files to find anything pertaining to this subpoena.

By Mr. MacIntyre:

Q. Mr. Glass, in your reading of item 3 in the subpoena, the one that called for correspondence which had passed between the people named in schedules A and C and which related to activities and discussions by the respondents as named in schedule C or any of such of those respondents or other associates, officials, and employees or their respondent freight rate bureaus concerning the determination of freight rates—do you mean in the examination—keeping that in mind—of all your district office files, you failed to find any one letter of any descrip-

3642 tion whatever relating to item 3?

A. What is that?

Q. That is the one relating to the determination of freight ~~rates in cents per b~~arrel for use by respondents' freight rate bureaus in filing freight rates.

A. I have nothing to do with that.

3643 Q. Who examined the files connected with your district sales office other than yourself?

A. The district sales office?

Q. The files built up by or in your district sales office over which you have charge?

A. My chief clerk helped me on that.

Q. With you supervising?

A. No, I was in and out of the office.

Q. Who is the chief clerk?

A. Mr. Carl Nolte.

Q. You and he selected all papers that were selected from your district sales office files over which you have charge?

A. I do not say all. We went over all of the files, but whether he did it or I, I do not know.

Q. You have read the other items in the subpoena, have you not?

A. Of course I read them before I started work.

Q. That is, you read each of them before you started your examination?

A. Yes.

Q. Now, in connection with item 4, calling for
3644 correspondence relating to trucking, in the seven you selected, was there any letter relating to motor truck transportation rates on Portland cement?

A. I checked the names on there. What do you call that? Is that D?

Q. This happens to be schedule A.

A. The only one that was on there that I had anything to do with was these names of the Westchester group and those individual circular letters. I did not have any others. They were just circular letters that I had copies of.

3645 Q. We will put the question this way. You did not yourself select from the district files, your district sales office files, any letter dealing with motor truck transportation on portland cement?

A. No, I did not select any. There was no letter there.

Q. Dealing with truck transportation of Portland cement? No letter in the files?

3646 Q. Now, coming to Item 8, Schedule A, which deals with the activity and discussions by the respondents or any of them, concerning the establishment of arbitrary or zone prices to meet competition of imported cement in certain sections, the imposition of tariffs upon importations of portland cement into the United States, espionage of and refusal to sell cement to the dealers who handle imported cement, or the adoption and use of other methods to combat importations and sales of foreign-made cement,—now, these seven circulars that I understood you to say that you selected from the files, did they include any letter whatsoever dealing with the importation of imported cement?

A. I don't remember just that.

3647 Q. In other words, you do not recall the selection of any of those papers?

A. I don't recall those papers, no.

Q. You did not find any in the files you examined dealing with those items?

A. I don't remember what was in them.

Q. I say, you did not find any such letters in the file dealing with the items I have just read?

A. The letters where those people were mentioned?

Q. In Schedule C? You did not find any letters?

A. I don't remember the wording of it.

Q. And only you and Mr. Nolte examined your district files?

A. He did not take those out. I took those out.

Q. And you did not find any?

A. I don't remember the wording.

Mr. MacIntyre: That is all.

3648 *Cross-Examination by Mr. Hershberger.*

Q. You did not make any attempt to examine traffic files, did you?

A. No—I will say no. I am pretty sure I did not.

Mr. Hershberger: That is all.

CARL NOLTE, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

I am chief clerk of the New York suburban district, one of the divisions of the company (Universal Atlas)
3649 under Mr. Glass. My duties consist principally in coordinating the work between the office, that is the executives, and the outside salesmen and having direct telephone contact with all the building material dealers whom we serve. I have been in my present position about ten years.

Q. Have you done some work recently in connection with a survey or examination of your files?

A. Yes, sir.

Q. In connection with the subpœna of the Federal Trade Commission?

A. That is right; I have.

Q. Will you state the scope and nature of the work you did?

The Witness: Personally I have spent about 45 hours in examining files—company files—both at our office and at our plant at Northampton, Pennsylvania.

3650 By Mr. Wooden:

Q. Did you confine your examination to the files of the suburban district with which you had been connected?

A. Principally, sir, but not entirely. They overlapped, and I examined some of the files of other districts, due to the shortage of help in the other districts.

Q. What files did you examine in the other districts?

A. Severel files, known as general files and several files known as New York City or Metropolitan department files.

Q. Did you make selections from the files which you examined both in the general sales department files and in the suburban district files?

A. In all of the files that I personally examined I made but one selection. I take that back. I made two selections. That particular file was a New York suburban district file, the district in which I am employed.

Q. Do you know what the two selections were?

A. Yes, I think they were both very similar. A letter was written by a Mr. J. J. Collister. Mr. Collister, as I understand it, is retired from the company, being over 70. That letter was addressed to the New York Central Railroad and the answer to that letter from the New York Central to Mr. Collister—I might add, if you will permit me, sir, they were not originals, but copies of letters that were on our own files.

3651 Q. What items of the subpoena did they relate to?

A. Foreign cement.

Q. Did you make the trip to the Northampton mill?

A. Yes, sir.

Q. Did you make any selections there?

A. No, sir.

Q. Where was it you examined the general files as distinguished from your district files?

A. In my New York office.

Q. Did you confine your examination to suburban district sales files?

A. Yes, sir.

Q. Did you make any selections therefrom?

A. No.

Q. Mr. Nolte, in reference to Item 4 of Schedule A of the subpoena, dealing with and referring to the activities of respondents or any of them concerning motor truck

3652 transportation, did I understand you to say you did not select any letter from your suburban sales files dealing with that subject?

A. To the best of my knowledge anl memory, I did not.

Q. And you and Mr. Glass were the only two who examined such files in your organization?

A. You mean in our own suburban files?

Q. Yes.

A. I cannot answer that correctly because there may have been other human beings in New York who did examine them.

Q. But not to your knowledge?

A. No, sir.

3653 Q. You did not see any letters in the files that you examined that related to motor truck transportation in connection with cement?

A. No, sir.

Q. And you found only two that related to importations of foreign-made cement coming within item 8 of the subpoena, which relates to the establishment of arbitrary prices or zone prices to meet competition of imported cement of certain sections, the imposition of tariffs upon foreign-made Portland cement, the espionage of and refusals to sell dealers using foreign-made Portland cement, etcetera—you did not find any except the two you mentioned dealing with imported Portland cement, even though those items I have read out to you appear in item 8?

A. No, sir; I was looking—

Q. (Interposing.) In other words, you did not find any—

The Witness: I was only about to say that the only two letters I found were the ones I mentioned.

By Mr. MacIntyre:

Q. You never found any others dealing with this item 8?

A. No, sir.

3655 Q. Were you ever aware that special prices were made in seaboard districts or in your suburban district to meet the competition of foreign cement?

A. No, sir, not to meet the competition of foreign cement; not that I know of. The only prices, if you will permit me to speak freely that I have ever received came to me from my immediate superior, and those prices were prices I used. As to why or what they are for, I do not know.

Examiner Norwood: Were those prices when you

3656 received them similar to those that were received by salesmen of competitors or that you learned were quoted by competitors?

The Witness: Well, any price that was given to me, sir, was given to me by my district manager, and I assume—I don't know, I am not in a position to testify accurately—

Mr. Zimmerman: (Interposing.) Then why do so?

Examiner Norwood: Don't tell us that. Tell us if you found they were identical with these competitors' prices that you met on the road. Were they?

The Witness: Yes, sir, competitive prices that our salesmen picked up.

By Mr. Wooden:

Q. Do you recall whether or not you put any special prices out in the summer of 1935 that were discontinued late in the year 1935 applying to deliveries for truck out of Brooklyn?

A. Well, all I know, sir, is that they had stock at Brooklyn, but I don't know about any special prices, essentially.

Q. Were the prices in your suburban district the same throughout the district?

A. Oh, no.

Q. What determines the differences between some parts of the district and others?

3657 A. Freight rates, principally, in some parts of our district.

Q. Do you know whether or not you got some special prices to some parts of your district that are not the result of differences in freight rates?

3658 Examiner Norwood: Has the witness testified that he had some special prices from time to time? Did you, Mr. Witness? Did you have special prices?

The Witness: I never had a price given to me as a special price, sir. The only price I have is the price that goes into effect as a result of a price change. If competitors put the price out, your salesmen pick it up.

Examiner Norwood: Did you have particular prices to quote in some parts of your territory which you quoted different from other parts of your territory?

The Witness: Yes, sir. In Connecticut, for instance, the price is different from Long Island, and that is the result of competition, as I understand it.

Examiner Norwood. I will sustain the objection as to the form of the question.

By Mr. Wooden:

Q. Is that the result of foreign competition?

A. I could not say that it was, sir. I don't know that.

Q. The lower price, I take it, is close to the seaboard from the other price, the higher price?

A. May I ask you to repeat that?

3659 Q. The lower price, I take it, is closer to the seaboard than the higher price?

A. Yes, that is correct as far as my memory serves me. The price furthest away from say New York as a seaboard port, is higher than in New York proper, if that is what you are asking.

Q. And at the same time the price at the seaboard is the price that is farthest from your mill, isn't it?

A. The price at the seaboard is the price that is farthest from the mill?

Q. Yes.

Mr. Zimmerman: Do you mean the price or the place?

Mr. Wooden: No, I mean the price.

By Mr. Wooden:

Q. The delivered price closed to the seaboard is in a territory that is farther from the mill than the price which is back in the interior?

A. Do you mean in actual mileage?

Q. No, I am talking about the price, the delivered price being lower at the seaboard.

Examiner Norwood: Further in point of miles, yes. I think he means that.

By Mr. Wooden:

Q. And further away from your mill.

A. I'm sorry, but I am a little confused on that 3660 point. I don't just get you.

Q. I suppose your superior, Mr. Glass, is the one I should have asked such questions of. I do not believe it is necessary to go any further with it with you.

3664 Washington, D. C.,
Wednesday, February 23, 1938.

3665 Mr. Wooden: When the hearing in New York was recessed until today, your Honor, it was understood that the papers and documents which would have produced on Friday of last week, under the subpoenas duces tecum, would be forthcoming this morning. I suggest we take out time at this moment to go ahead with those papers.

Examiner Norwood: Go ahead, gentlemen.

"Mr. Leisure: Your Honor, I have here papers furnished by the North American and we have numbered the sheets, in order to save time. There are 342 sheets in this file.

Examiner Norwood: Are they grouped in any way?

Mr. Leisure: I do not know. I do not believe they are.

Examiner Norwood: You say there are 342 sheets?

Mr. Leisure: Yes, and these are the North American.

Examiner Norwood: Mark them as Commission's Exhibit 797, for identification, A to blank.

3666 Mr. Leisure: Your Honor, here is another group from the same company consisting of 479 sheets.

Examiner Norwood: From North American?

Mr. Leisure: Yes.

Examiner Norwood: Mark them for identification, 798-A to blank.

Mr. Leisure: Another file from the same company, consisting of 193 sheets.

Examiner Norwood: Mark them for identification 799-A to eight K's.

Mr. Leisure: Another file from the same company of 55 sheets.

Examiner Norwood: Mark them 800-A to CCC for identification.

Mr. Leisure: Another file from the same company consisting of 45 sheets.

Examiner Norwood: Mark them 801 for identification A to SS.

3667 Mr. Leisure: Another one of 13 sheets from the same company.

Examiner Norwood: Mark them 802 for identification A to M.

Mr. Leisure: From the same company, 193 sheets.

Examiner Norwood: Mark them 803 for identification, A to eight A's.

Mr. Leisure: Another file from the same company, of 79 sheets.

Examiner Norwood: Mark them 804 for identification, A to four A's.

Mr. Leisure: Another file of 16 sheets, from the same company.

Examiner Norwood: Mark them 805 for identification, A to P.

3668 Mr. Leisure: Another file from the same company of 105 sheets.

Examiner Norwood: Mark them 806 for identification, A to five A's."

(Each document thus produced was marked for identification as indicated by the directions of "Examiner Norwood".)

Mr. Leisure: Now, your Honor, that is probably as far as I know, in complete accordance as far as that company is concerned. I am not positive and I will hold it open until tomorrow. There is a letter which goes with that file which those presenting the papers have asked to be incorporated in the record. This is one of the companies, your Honor, in which we appear as co-counsel and not as sole counsel.

Examiner Norwood: These papers are received with the same understandings and the same exceptions as heretofore. I do not see the necessity of putting that letter in the record, if it is received as an exhibit.

Mr. Leisure: That is all right, if it is received as an exhibit. They asked that it be included in the record.

Examiner Norwood: We are trying to keep the record down as much as possible.

Mr. Leisure: As long as it is part of the record, I am sure they will be satisfied.

3669 Examiner Norwood: The letter consisting of two sheets, presented by counsel, and which accompanied this proffer of the North American Cement Corporation, is received in evidence as Commission's Exhibit 807-A and B.

(COM. EX. 807-A and B was offered and received in evidence.)

3670 "Mr. Leisure: I have papers here from the Alpha Company, the first file consisting of 73 sheets.

Examiner Norwood: The documents will be marked Commission's Exhibit 808-A to ZZZ for identification.

Mr. Leisure: I have another file from the same company, the Alpha Company, and it consists of 274 sheets.

Examiner Norwood: The documents will be marked Commission's Exhibit 809-A to blank for identification.

Mr. Leisure: And another file from the same company consisting of 75 sheets.

Examiner Norwood: The documents will be marked Commission's Exhibit 810-A to WWW for identification.

Mr. Leisure: I have a file here from the Ash Grove Lime & Cement Company, consisting of 18 sheets.

Examiner Norwood: The documents will be marked Commission's Exhibit 811-A to R for identification.

3671 Mr. Leisure: I have another file which is from the Giant Portland Cement Company, consisting of 64 sheets.

Examiner Norwood: The documents will be marked Commission's Exhibit 812-A to LLL for identification.

Mr. Leisure: The next is from the Hermitage Company, 51 sheets.

Examiner Norwood: The documents will be marked Commission's Exhibit 813-A to YY for identification.

Mr. Leisure: The next is from the Ideal Company, consisting of 4 sheets.

Examiner Norwood: The documents will be marked Commission's Exhibit 814-A to D for identification.

Mr. Leisure: The next file is from a subsidiary, not strictly under the subpoena, but it is a subsidiary of the Ideal Company, in Colorado, the Colorado Portland Cement Company, and that consists of 10 sheets.

Examiner Norwood: The documents will be marked Commission's Exhibit 815-A to J for identification.

3672 Mr. Leisure: The next file is from another subsidiary of the Ideal Company in Oklahoma, the Oklahoma Portland Cement Company, 4 sheets.

Examiner Norwood: The documents will be marked Commission's Exhibit 816-A to D for identification.

Mr. Leisure: The next is from the Kosmos Portland Cement Company, 182 sheets.

Examiner Norwood: The documents will be marked Commission's Exhibit 817-A to 7Z.

Mr. Leisure: The next is from the Lone Star Company, 117 sheets.

Examiner Norwood: The documents will be marked Commission's Exhibit 818-A to 5M.

Mr. Leisure: The next is from the Medusa Company, 28 sheets.

Examiner Norwood: The documents will be marked Commission's Exhibit 819-A to BB.

3673 Mr. Leisure: The next is from the National Cement Company of Alabama, consisting of 347 sheets.

Examiner Norwood: The documents will be marked Commission's Exhibit 820-A to blank.

Mr. Leisure: The next is the Nazareth Company, 144 sheets.

Examiner Norwood: Mark them 821-A to six N's.

Mr. Leisure: The next is from the Pennsylvania Dixie Cement Corporation, 109 sheets.

Examiner Norwood: Mark them 822 for identification, A to five E's.

Mr. Leisure: The next is West-Penn Cement Company, 30 sheets.

Examiner Norwood: 823 for identification, A to DD.

3674 Mr. Leisure: In compliance with the subpoena on Mr. George Reiter, we have six sheets from the Cement Institute.

Examiner Norwood: Mark them 824 for identification, A to F.

Mr. Leisure: Your Honor, there are some individuals. The material will be here by noon. It is on its way and we would like the privilege of putting that material in when it arrives, so that the individuals will not have to wait until tomorrow.

Examiner Norwood: Certainly.

Mr. Hershberger: We have nine sheets from the Universal Atlas Cement Company numbered respectively 430, 431, 432, 433, 434, 435, 436, 438 and 439.

Examiner Norwood: 430 to 439 inclusive?

Mr. Hershberger: Yes, except 437, which is not here.

Examiner Norwood: Mark them for identification 825-A to I."

(Each document thus produced was marked for identification as indicated by the directions of "Examiner Norwood".)

Mr. Hershberger: I proffer that to your Honor subject to the same objections I made when I proffered

3675 before.

Examiner Norwood: Yes.

Mr. Leisure: Your Honor, I said as to North American, that comprised everything. I neglected to say that

the Burns and Clark material is not included. I understand we will have a ruling on that soon, and we will take that up then.

It is understood that this is all tendered subject to our previous objections and exceptions?

Examiner Norwood: Yes.

Mr. Leisure: We can continue and put some more in if you will wait just a minute.

Examiner Norwood: Yes. Go right ahead.

"Mr. Jaques: Your Honor, I proffer in response to the three subpoenas, one served on Mr. Joseph S. Young as President of the Lehigh Portland Cement Company, another subpoena on the Secretary of the company, and the third subpoena served upon Mr. Rader—in response to these subpoenas duces tecum, I proffer a folder marked "L. P. C. Co. No. 1"—

Examiner Norwood: (Interposing) That is for Lehigh?

Mr. Jaques: Yes, sir; for Lehigh Portland Cement Company—I proffer a folder marked "L. P. C. Co. No. 1, 76 pages, dated 2-23-38."

3676 Examiner Norwood: Mark them 826 for identification, A to three X's.

Mr. Jaques: Yes, sir; for Lehigh Portland Cement C. Co. No. 2, 20 pages, dated 2-23-38."

Examiner Norwood: 827 for identification, A to T.

Mr. Jaques: I proffer another folder marked "L. P. C. Co. No. 3, 311 pages, dated 2-23-38".

Examiner Norwood: Mark them 828 for identification, A to blank.

Mr. Jaques: I proffer another folder marked "L. P. C. Co., No. 4 of 31 pages, 2-23-38".

Examiner Norwood: Mark those 829 for identification, A to EE.

Mr. Jaques: I proffer another folder marked "L. P. C. Co. No. 5, 55 pages, 2-23-38".

3677 Examiner Norwood: Mark them 830 for identification, A to CCC.

Mr. Jaques: I proffer another folder marked L. P. C. Co. No. 6, 12 pages, 2-23-38.

Examiner Norwood: Mark them 831 for identification, A to L.

Mr. Jaques: I proffer another folder marked L. P. C. Co. No. 7, 20 pages, 2-23-38.

Examiner Norwood: Mark them 832 for identification, A to T.

Mr. Jaques: I proffer another folder marked L. P. C. Co. No. 8, 22 pages, 2-23-38.

Examiner Norwood: Mark them 833 for identification, A to V.

Mr. Jaques: I proffer another folder marked L. P. C. Co. No. 9, 35 pages, 2-23-38.

Examiner Norwood: Mark them 834 for identification, A to II.

3678 Mr. Jaques: I proffer another folder marked L. P. C. Co. No. 10, 29 pages, 2-23-38.

Examiner Norwood: Mark them 835 for identification, A to CC.

3679 Mr. Jaques: I proffer another folder marked L. P. C. Co. No. 11, 83 pages, 2-23-38.

Examiner Norwood: Mark them 836 for identification, A to 4E.

Mr. Jaques: I proffer another folder marked L. P. C. Co. No. 12, 97 pages, 2-23-38.

Examiner Norwood: Mark them 837 for identification, A to 4S.

Mr. Jaques: I proffer another folder marked L. P. C. Co. No. 13, 28 pages, 2-23-38.

Examiner Norwood: Mark them 838 for identification A to DD.

Mr. Jaques: I proffer another folder marked L. P. C. Co. No. 14 of 115 pages, 2-23-38.

Examiner Norwood: Mark them 839 for identification A to 5K."

(Each document thus produced was marked for identification as indicated by the directions of "Examiner Norwood".)

Mr. Jaques: Your Honor, I have delivered those 3680 on the same terms as heretofore, and I make now the same objections.

Incidentally, I might say there is an error in the record on the 28th. I think I stated that I had no objection to submitting them to the other side. That is wrong. I do have an objection.

Examiner Norwood: The same objections will be noted.

Mr. Jaques: I do not believe that my client will be able to make full compliance by tomorrow. There are some papers coming in to my office in New York. We will do the

best we can, but we will probably have to ask a few more days under the subpoena.

Examiner Norwood: I think that will be satisfactory.

Mr. Wooden: I believe the Green Bag has some papers.

"Mr. Heffernan: In response to the subpoena, Green Bag Cement Company of Pennsylvania present to the Examiner the following materials,—

Letter dated February 3, 1934, from the Nazareth Cement Company to Albert P. Meyer. That is one separate exhibit.

Examiner Norwood: Is it necessary to read a description as you have heretofore on those, because coun-
3681 sel has now had time to list these papers and keep their own record, and I do not think we should take up the time and enlarge the record. I think you should do as the other counsel does, that is submit these and let us mark them for identification."

Mr. Heffernan: That is agreeable, except that I have not done it that way. If you will give me an opportunity to have them marked in some way, I will be glad to do that. I will submit these later in the day.

GEORGE H. REITER was thereupon recalled as a witness for the Commission and, having been previously duly sworn, testified further as follows:

Direct Examination (Continued) by Mr. Wooden.

Q. Mr. Reiter, when you left the stand on your last appearance, you had just identified Exhibit 753-C and it had been admitted. I am showing it to you just to refresh your mind as to what it was (handing paper to witness).

A. (Examining paper:) Yes.

3682 Q. Referring to your statement in the exhibit that destination costs should be filed with the Code Authority inasmuch as the price at bidder's mill would vary with each such destination and therefore it would be impractical to file all such prices at bidder's mill, was the price that you were referring to as varying at each destination the mill net?

A. Well, the Government destination cost would vary with the destination, and also the mill net received would vary unless the freight rate from that mill happened to be the same at the two destinations.

Q. But you say, unless the dstination costs were filed, the price at the bidder's mill would vary with each destination.

A. Here is what was in my mind in that respect. Unless a member of the industry filed a single price f. o. b. its mill for sale of cement, let us say to the Government—

Q. (Interrupting): At any destination?

A. At any destination,—then it would indicate to me that they would file a varying mill cost f. o. b. mill price for those destinations. That is what I was calling attention to. Now then, if they filed various mill prices, it seemed to me that it would be difficult to handle in the sale of cement, inasmuch as they would have one price f. o. b. mill for sale to the Government or more than one price upon which they might ship on the same day.

3683 Q. To different destinations?

A. To different destinations, yes, sir.

Q. Then I take it it was the varying mill net that you had in mind in referring to the variation in prices?

A. That is right.

Q. I am now showing you, Mr. Reiter, papers marked 753-D to P, inclusive. They are all photographic copies of communications, I think, passing between the Code Authority and others and frequently between you as an officer of the Code Authority and members of the code. Will you look them over and state whether you can recognize them and identify them as authentic reproductions of the originals?

A. (Examining papers:) Yes.

Q. Would you say they could be considered as typical cases of filing with the Code Authority of Government bids?

Mr. Leisure: Just a moment, Your Honor. It seems to me that it can not generalize in this way as to what is typical and what is not. I do not know how far they may go.

Mr. Wooden: All right, I won't press the question. I offer the exhibits for the record at this time.

Examiner Norwood: Is there any objection?

3691 (COM. EX. 753-D to P was offered and received in evidence.)

Q. Mr. Reiter, showing you Exhibit 753-P and calling attention to the writing on the margin—"Price agrees with others"—do you know whose handwriting that was?

3692 A. No, I do not recognize that writing.

Q. Is it a fair summation of those papers there, Mr. Reiter, that when a member filed with the code authority its Government destination cost or mill price on a particular letting or Government contract, that was coming up, that the code authority would then notify each mill which might be interested in that particular letting of the lowest price filed?

A. That is right.

Q. So, then, each prospective bidder knew the lowest price that was filed—in other words, he had to meet that lowest price or he was out automatically on public lettings, was he not?

A. Yes.

Q. And if he wanted to file a price lower than the lowest price he had to give five days notice before it became effective?

A. That was true of all prices filed.

Q. Now, after the code authority discontinued operations and the trade practice committee took over the filing of prices with regard to government destination costs, was the same procedure followed?

A. We attempted to follow the same procedure.

Q. Was the same procedure followed after the Institute began its publication of land grant rates?

3693 A. As I have said before, we continued to accept filed prices until December, 1935, and, if my recollection serves me correctly, we started to receive filings of land grant rates about January 1, 1936.

Q. Even under the code, however, were not the land grant rates for particular lettings filed as a part of the destination costs or along with the destination costs?

A. It would be an exception for them to be filed and, if they were filed, they came in the letter as gratuitous information to us, of which we took no cognizance.

Q. But the Government destination costs ordinarily included land grant rates, did they not?

A. Yes.

Q. And the Government destination costs, of course, were filed after the code?

A. That is right.

3697 Q. I am showing you papers, Mr. Reiter, marked
3698 840-A to K for identification, which are photostatic copies of some documents. Will you accept them as authentic reproductions of papers from the files of the Code Authority?

A. Yes.

Mr. Wooden: I offer them for the record, then, your Honor.

3702 (COM. EX. 840-A to K was offered and received in evidence.)

Q. I notice among those papers, Mr. Reiter, a complaint filed by the Universal Atlas Company against, I 3703 think, two concerns with regard to their having quoted an f. o. b. mill price on Government business which was the equivalent of the destination cost but which, because it was not filed with the code authority, was objected to. Is that correct?

A. No. As I read this, Mr. Wooden, their objection to these three companies' filings was that they bid f. o. b. mill prices which were not on file with the code authority.

Q. Then, in taking it up with the concerns who so bid, did they not defend on the ground that their f. o. b. mill prices were the equivalent of the Government destination costs?

A. I would have to have the other correspondence. Does that follow here?

Q. Yes. That is there. Here (exhibiting) is the Penn-Dixie reply, which is marked 840-H and here (exhibiting) is a letter to Alpha, marked 840-J, indicating that Alpha had taken a similar position.

A. This is very difficult to read. It is a photostat of a carbon copy which is very poor.

I can answer your question now, in part. One of these companies replies, making the statement that they bid a price f. o. b. their mill equivalent to the Government destination cost on file. Whether it was or not I am not in a position to say.

Q. Did you disagree with that procedure, and was it on the ground that because of the uncertainty of the 3704 actual land grant rates used by the Government, that sort of f. o. b. mill price, even though the equivalent of the destination cost, was not acceptable?

A. Well, I do not see my reply. Is that in here too?

Q. I think so.

A. In this reply to one of the respondents in this case we disagree with his statement that it was proper for him to bid f. o. b. his mill at what he considered to be the derived price f. o. b. his mill.

Q. Derived from the Government destination cost?

A. Derived from the Government destination cost—for the reason that the land grant rate which he subtracted might not have been the correct land grant rate.

Q. Now, will you take a pencil and see if I correctly understand that situation, by taking an example? Let us assume that the Government destination cost filed was 2.5302; that the estimated land grant rate used by the bidders was .2502.

Examiner Norwood: Is that the differential?

Mr. Wooden: No, Your Honor. Then, that would make an f. o. b. mill price of 2.28—

The Witness: Is this now the estimated land grant rate from the basing mill which would figure this Government destination cost at the figure given?

By Mr. Wooden:

Q. Let us assume, first, that it is the land grant
3705 rate from the bidder's mill, regardless of whether it is a basing mill. That would leave an f. o. b. mill price, for invoicing, of 2.28, would it not?

A. That is correct.

Q. Now, if you took that 2.28 mill price and the Government were to estimate its land grant rate at .2302, that would give a Government destination cost of 2.5102, would it not?

A. That is right.

3706 By Mr. Wooden:

Q. In other words, that would have been 2 cents below the filed government destination cost?

A. Yes, that is correct.

Q. In other words, 2 cents below the filed government destination cost?

A. That is right.

Q. And on the other hand, if you assumed a destination cost of 2.5302 and the land grant rate actually deducted in the settlement was .2302, that would give the mill a net of 2.30, would it not?

A. Yes.

Q. Instead of 2.28 which it would have had on the basis of the estimated land grant rate?

A. That is right.

Q. So that if a bidder used an estimated land grant rate that was less than the actual, he would have a destination

cost that would differ from the destination cost on the basis of the estimated?

3707 Q. It makes a difference in what the mill receives for the cement, doesn't it, what is actually paid the railroad, doesn't it?

A. That is right. I call your attention, Mr. Wooden, to the fact that you have to assume that these land grant rates are from the basing point. If they were not from the basing point, they would not have any bearing on your government destination cost.

3708 Q. If each mill were bidding f.o.b. its own mill instead of from a basing point, then it would have been satisfactory to have used the equivalent of the derived price from the government destination cost, would it not?

The Witness: I would say that it still would have been unsatisfactory to the Code Authority unless they had a price filed f.o.b. their mill. We were concerned 3709 with the actual filed prices.

By Mr. Wooden:

Q. But all other objections would have been out of the way except the fact that they did not file it as a mill price?

Examiner Norwood: Read the question.

(The question is repeated.)

Examiner Norwood: Was that the sole objection?

The Witness: That was the sole objection in the first instance, and it would be in the example now given by Mr. Wooden. That was the basis of the objection that was taken up with the respondents in the complaint 3710 which you cite here, and I probably gave the respondents some additional information to show why ti was not an exact filing.

By Mr. Wooden:

Q. An the results of what they had done in such case might produce the results which I indicated in my example?

A. They might.

3711 Q. Mr. Reiter, showing you Exhibit 840-I and 840-J, in which you quoted or set forth, a form of so-called control clause to the sales managers of the Penn-Dixie and Alpha companies, I notice in one case you said that "a control clause should be used in modification of which we feel the following is an example," and in the

other case you said that, "it may be bid with some such control clause."

Was there any difference in your mind between the phraseology or thought you wanted to convey in those two expressions—in one case it should be and in the other it may be?

A. No, except this, that when a government destination cost was filed with a control clause, we, in reporting that to other possible bidders, reported the substance of that control clause and, therefore, if it was filed with a control clause and bid without it, the bid, in our opinion, did not comply with the code. That is the excuse for the words "should be."

3712 Q. I understand, Mr. Reiter, along about the middle of December, 1935, the Institute began the compilation and publication of the land grant rates?

A. Yes, about that time. It was some time between the 15th of December and the middle of January, I should say. I do not remember just the date.

Q. That was also about the time that you discontinued the filing of prices, was it not?

A. Yes, sir.

Q. Was there any connection between the discontinuance of the latter and the beginning of the former?

A. Not so far as I know. I might say that a number of the members of the Cement Institute had, for some time—a year or more—been in favor of the Cement Institute handling some sort of filing or disseminating some sort of information on land grant rates and, to that extent, the minutes of the Board of Trustees' meetings will show from time to time that the matter was brought up.

Q. What was the purpose underlying the collection, compilation and distribution of the land grant rates when it was known that they were on an estimated basis only?

Mr. Leisure: Now, I object to "when it was known they were on an estimated basis only." I have often objected on the ground that one party to the contract is just as able to figure it as the other party, and I object

3713 to those distinctions being made when the railroad company, being one of the parties to the contract, figures if not to be on an estimated basis.

3714 Mr. Wooden: Well, there were a lot of companies.

Mr. Leisure: They figured it as the actual rate for the benefit of the contracting parties.

Mr. Wooden: There was a lot of figuring done by the companies and not by the railroads at all.

Mr. Leisure: It is argumentative to put the question in that way. If you want to ask why it was done, that is one thing, but I think it is improper to ask it and to include in it when it was known which were on an "estimated basis."

Examiner Norwood: Objection overruled.

The Witness: Well then, in my answer I would like to say, Mr. Wooden, by any form of measurement, some of these land grant rates were not estimated, that is, whether by your statement or Mr. Leisure's, inasmuch as some of them were known to be rates actually used by the United States Government.

By Mr. Wooden:

Q. Many of them were known to be estimated, were they not?

A. We had in general three types or three sources of land grant rates filed with us. The first I have described. Those were the ones actually computed and used by the United States Government and known through tabulation of bids on which they were occasionally given. The second was a rate furnished by the land grant carrier,
3715 namely the railroad, and the third was a computation by traffic men of the cement industry having secured from the railroad already the division of the commercial rates between two or more carriers.

Q. But didn't you recognize that frequently the land grant rates filed with you and put out were not anything other than an estimate or the best estimate that could be made?

A. As I say, the second of these three classes was a computation in my opinion by the carrier, and the third class was a computation by the traffic man of the cement company. Now then, I recognize this fact, that neither one of those two computations exactly told in many cases the computation of the officer of the United States Government.

Q. On which settlement was made?

A. Upon which settlement was made.

Q. With the railroad?

A. That is right.

Q. Well, now, in view of your recognition of that fact,

what was the purpose then in compiling and distributing estimated land grant rates?

Mr. Leisure: I still object to that question because the witness has said that many of these cases turned out to be actually the rates used, so the computation is not based solely on estimated rates. The question assumes a fact which the record does not bear out.

3716 Examiner Norwood: He has also said that some of those were not so.

Mr. Leisure: Yes, but the question contains the phrase "a compilation of estimated rates," and he said that some of these were not estimated, but they proved to be actual rates.

Examiner Norwood: Yes, he said that.

(The question is read.)

Examiner Norwood: The objection is overruled. Answer the question.

The Witness: I knew that members of the industry wanted as good information as they could get on land grant rates, and therefore I presumed of course that they used this information in bidding to the United States Government under Government destination costs.

3717 Q. Can you see how members who used the rates as filed under those circumstances could know whether they were the actual rates or not?

The Witness: Yes, in many cases, because in collecting this information, we required that the source of the member filing this information be given, and when we disseminated the land grant rates, we in turn advised all members of the source, such as Government figures,

3718 railroad computation, in many cases naming the railroad, and the third classification was company figures which they understood to be in this third class which I have just named.

By Mr. Wooden:

Q. Would they know which company it was?

A. No.

Q. And even in the case of the so-called railroad figure of Government figure, were not those figures subject to change as shipments were actually made later on?

A. Let us take the most fixed of those two, namely the Government figure, and it was subject to change for two reasons. One is that the land grant mileage actually

changed on such things as a relocation of the railroad, and the other point on which it changed was that some other official of the Government figured it.

Q. Were not most of the land grant rates filed by a very limited number of concerns?

A. I do not know as I can answer that. I will say this, that the land grant rates were not generally filed for certain sections of the country where they nevertheless existed. I have in mind, particularly, the West Coast. Many companies filed land grant rates with us and I would not know how many, Mr. Wooden.

Q. Well, so far as the central section of the coun-
3719 try is concerned, were not most of the land grant rates in that section filed by Universal Atlas and Lehigh?

A. They filed many land grant rates. Both of those companies filed many rates, and I cannot tell you how many more companies filed and how large their filings were in number.

Q. Will you concede that if mills wished to quote an identical delivered price on government business, even estimated land grant rates would be helpful in accomplishing that end?

The Witness: If all members bidding used the same price bases which were known to all bidders and the same land grant rates, adding the applicable land grant rates to the proper bases, they will, of course, arrive at the same government destination cost.

3720 Examiner Norwood: Was that the purpose for sending out this information?

The Witness: So far as I was concerned this was just a service that the Cement Institute was rendering in my charge at the discretion of the Board.

By Mr. Wooden:

Q. How did this compilation of land grant rates originate? Who was the author-originator of it?

A. I do not believe I understand what you mean.

Q. I say, how did it originate—this compilation of land grant rates? Who was the author or authors? Whose idea was it?

A. Oh, I do not remember. It was discussed by a number of members of the industry to my knowledge and I cannot name them.

Q. Can you state what the purpose was in putting out compilations of land grant rates which included some which were only estimated?

The Witness: I cannot state.

By Mr. Wooden:

Q. Was it in order that the bidders on government business might make a bid at destination—or which
3721 would enable them to make a bid—on a parity at destination.

Mr. Leisure: Now, your Honor, that is the government's contention in this case, whereas our contention is the very opposite to that.

Examiner Norwood: I think that is argument and I think that those are conclusions which must be drawn from facts that are already in evidence.

Mr. Wooden: I agree they may so be drawn, but I do not think that affects the question of whether this witness can answer the question.

Examiner Norwood: I think I will have to sustain the objection to that question. Off the record.

(Discussion off the record.)

By Mr. Wooden:

Q. Was, in general, the purpose of the compilation of land grant rates and their distribution, the same as the purpose of the work of the freight rate bureaus in putting out freight rate books?

A. Yes, I would say so.

Q. I show you a number of pages marked for identification 841-J to JJ, inclusive. Will you accept those as authentic documents from the files of the Cement Institute or the Code Authority as the case may be?

A. (After examining papers) Yes.

3722 Q. These all relate to the subject of land grant compilations and filings after December, 1935, do they not?

A. Yes, sir.

Mr. Wooden: I offer these for the record.

3726 Mr. Wooden: As to 841-T, to which objection was made, it is a file copy of the witness' own letter, from the fact it bears the witness' own initials.

Mr. Leisure: That does not appear in the record so far.

Mr. Wooden: No, that is true.

Examiner Norwood: Is that true?

The Witness: That is true.

3727 Mr. Wooden: For instance, there is an objection to 841-Q. It is separated here from 841-P, which is a letter transmitting and describing a figure such as is contained in this paper 841-Q.

Examiner Norwood: Let us see what the witness knows about that. Hand the papers to him.

Mr. Wooden: The letter of transmittal is addressed to the witness.

The Witness: This letter (exhibiting) is a letter from the traffic manager of the Ash Grove Lime & Portland Cement Company to the sales manager of the same company and a copy has been marked to me as general manager of the Cement Institute in Chicago. The letter relates to land grant rates from various points of origin to Newkirk, New Mexico, and it seems reasonable that this list of rates was attached to this covering letter, copy of which was sent me.

3728 Mr. Leisure: Is that the list that you say seems reasonable was attached, is there any reference to it in the letter?

The Witness (reading): "I have checked these back", referring to various land grant rates to Newkirk, New Mexico—"and have had them rechecked"—I am interpolating here—"and am handing the same to you for such use as you desire".

Mr. Leisure: The question is whether or not you know that such a list was enclosed and whether that is the list that was enclosed, or is it just some list that has been picked up and put with this letter?

The Witness: I can not positively answer that question.

3729 Mr. Leisure: I am trying to find out whether or not the list 841-Q is referred to in any way in 841-P. If it is, whether or not that is the list that has been referred to, if he knows.

The Witness: Well, I say that I do not know—do you want me to answer the question?

Examiner Norwood: Yes.

The Witness: But the list is headed "Land Grant Rates to Newkirk, New Mexico," and it bears on its side some notations not in my handwriting, but which indicate that it was in the office of the Cement Institute.

Mr. Leisure: Is it your best judgment that this is a list which went with this letter?

The Witness: That is my best judgment.

3730 Q. Now, it is your judgment, Mr. Reiter, that the
3731 tabulation is 841-C is the tabulation that was forwarded by 841-B?

A. This is not complete, Mr. Wooden.

Q. 841-C and D,—I beg your pardon.

A. Well, I happen to remember this exhibit because it was the only one that came in this identical form. However, I am not able to say that this is the complete attachment to the letter which is offered with it, because there may be some additional facts of that nature.

Q. So far as it goes, is it your judgment that these sheets and tabulation were forwarded with the letter?

A. That is my judgment, yes, sir.

(COM. EX. 841-A to JJ was offered and received in evidence.)

3732 Q. Referring now, Mr. Reiter, to Exhibit 841-B, the Southwestern Portland Cement Company, El Paso, attached is a schedule of land grant rates including the emergency charge, and I note this statement in the letter: "So far as concerning rates established by this member company and in connection with references C and D, it should be stated we do not believe them to be the same as would be established by either the Government or the carriers, there being oftentimes dispute between themselves in these matters, but we believe them to be as nearly correct as may be figured by a commercial concern." Did you in handling the rates filed with such a statement notify the other companies of such a statement as that?

A. Yes. Probably in a much briefer form. In such a case, we would say to our members in disseminating that information "Company computation".

Q. Well, but would you tell the other members that the company that computed it did not believe that they were the same as would be established by the Government or the carriers?

A. We did not furnish members that complete information. However, there was no misunderstanding among our members as to the information furnished. I think that that can be shown by one of these statements of freight rates for any one of the States. I see one among your exhibits there.

3733 Q. I notice among these exhibits a number of filings by the Universal Atlas Company giving land grant

rates to various destinations. They also stated the government destination cost which they had computed on the basis of these rates. Was the government destination cost reported by them distributed among the other members?

A. No, because in our opinion that was a price filing and we took no cognizance of it at all or advised no one of what we considered to be extra information on their filing.

Q. Did you ever inform the Universal Atlas that it should not report the government destination cost?

A. Well, it made no difference to us whether they did or not. They had the same notice of the information that we sent out that others did. However, I remember talking about it some time later when these things started to come in, with an officer of that company.

Q. It appears from these papers that they were doing it as late as October, 1936, after beginning it along in January, 1936.

A. I think that was their usual custom.

Q. Do you know whether or not they were accustomed to notify any other mills direct of the way they had figured the government destination cost?

A. You mean mills of other cement companies?

3734 Q. Yes.

A. So far as I know, they did not.

Q. Now, I notice that Universal Atlas, in its filings of land grant rates, in these exhibits, filed them from a certain number of points. Were those basing points?

A. Let me see them.

Q. There is one there—841-G. (Handing paper to witness.)

A. There are six points of origin given in this 841-G, namely, North Birmingham, Boyles, Leeds, Clinchfield, Georgia, and Tampa, and those points are basing points.

Q. All of them?

A. Yes.

The Witness: Well, I believe that all of those points are basing points, the first three being grouped at Birmingham, being the mill points in the neighborhood of Birmingham.

3735 By Mr. Wooden:

Q. Clinchfield?

A. Clinchfield. That is in Georgia.

Q. That is a mill point?

A. That is a mill point.

Q. Tampa is a mill point?

A. It is a mill point.

Q. What did you mean by saying that you recognized them as basing points?

A. Well, I want to make it plain that, so far as this time was concerned, it was not concern of mine whether the points of origin from which land grant rates were filed were or were not price bases.

Q. Basing points, you mean?

A. Well,—

Q. (Interposing): Is that what you mean by "price bases?"

A. So-called basing points, but from other information that I have, those points are price bases. I am sure that you will find, in this work of filing and dissemination of land grant information, that land grant rates from other than price bases were also filed.

Q. Will you explain what you mean by "basing point" and "non-basing point?"

A. Well, let me say, first, that there are quite a few members of this industry who deny that they have
3736 basing points. I have heard some of them say they have a maximum mill net and the term "basing point" may be technically faulty.

Q. Maximum mill net?

Mr. Hershberger: Let him answer.

Mr. Wooden: Do you mean maximum mill net?

The Witness: I do.

Examiner Norwood: What do you mean by the term "basing point?"

Mr. Zimmerman: I think the witness was in the course of answering that question, your Honor.

Examiner Norwood: If counsel is through—

Mr. Zimmerman: (Interposing) I think the witness should be permitted to complete his answer.

Examiner Norwood: Answer my question. Read it to him, Mr. Reporter.

(The reporter read the question.)

3737 The Witness: It is a price base—not a price—being a figure selected by the company owning that mill to which freight rates are added in order to determine destination prices.

Examiner Norwood: That is a base price. I asked you what you understood by the term "basing point."

Mr. Zimmerman: Was not that the same question that counsel asked him and in which he was engaged in answering?

Examiner Norwood: I think it is.

Mr. Zimmerman: Yes, I think it is.

The Witness: What I understand as a so-called basing point, is a point at which a mill exists, whose owner has decided to select a price base.

Mr. Wooden: And are there some non-basing point mills who use the basing point mill price as the basis on which to calculate their delivered price?

Examiner Norwood: A point other than their mill?

The Witness: They must have some method other than that described because they have no price base.

Now, that can be described as meeting everywhere quotations of their competitors, or they may, having knowledge of their price bases, use those price bases in determining their own destination price which they quote.

3738 By Mr. Wooden:

Q. Sometimes basing points are placed at points where there is no mill, is that true?

Mr. Zimmerman: Now, in what industry? That is true perhaps in the steel industry, and that is where the basing point system apparently originated and where it was used, but there is nothing that this witness has described that is even remotely similar to the arbitrary basing points that were followed in either the Pittsburgh plus or the multiple basing point system in the steel industry which followed it.

Examiner Norwood: All that may come out now if you will let him answer the question. Read the question.

(The question is repeated.)

The Witness: That is right.

By Mr. Wooden:

Q. And sometimes are basing points put in effect at a mill point by a mill that has no mill at that point?

A. I have heard some conversation to that effect, but I have no knowledge,—and may I continue in further answer to your last question, that while so-called basing points are established at other than at cement mills, they are actual shipping points for cement, so far as I know.

Q. I notice among these exhibits that we are referring

to, that sometimes Universal Atlas filed a land grant
3739 rate from Jacksonville, Florida. That is not a mill point, is it?

A. That is not a mill point?

Q. To what extent is it a shipping point?

A. It is an actual or potential shipping point of imported cement.

Q. That suggests then that sometimes basing points are made at places where imported cement enters the country, is that correct?

A. That is true.

Q. Can you name other places that fall into that category?

A. Yes, there are quite a few. Savannah, Wilmington, Miami, Mobile and several more. I can not remember them all.

Q. Can you name any more of that sort further north on the Atlantic Coast? Did you get to Wilmington?

A. Wilmington.

Q. Is Charleston one?

A. Charleston.

Q. How about further north than Wilmington?

A. I do not believe that are any more.

Q. Well, imported cement comes in at ports farther north than that, does it not?

A. That is right.

Q. Why is it that they do not have basing points to meet that imported cement competition farther north?

3740 Examiner Norwood: You can state that of your
3741 own knowledge. Objection overruled.

The Witness: I understand that there are no commodity freight rates on cement out of the Port of New York, for example.

By Mr. Wooden:

Q. Well, have there not ben some so-called arbitrary prices in that territory to meet the foreign cement competition?

The Witness: During the open price filing, there
3742 was a series of destination prices filed around the City of New York which were considerably lower than prices filed before that with the code authority, and there was a condition of such filing permitting under certain conditions truck delivery out of certain warehouses in New York. From there, I had knowledge.

3743 By Mr. Wooden:

Q. Was there not also some arbitraries, so-called, filed in the vicinity of Boston?

A. I don't recollect specifically as to Boston whether such filing occurred at that time or not.

Q. Referring to Exhibit 841-I, being schedule No. 1 of land grant rates for the State of Alabama, issued by the Institute on January 23, 1936, what was the object in informing the recipients of the schedule that there was no assurance that the stated land grant rate will be the exact one that was computed and used by the United States government in any particular case?

A. As I said, we were furnishing them the information as we received it and giving them the source of the information. I call your attention to the fact that all land grant rates in this schedule are keyed indicating their source as represented to us, and therefore I wanted to make it plain to our members that we were not guaranteeing these land grant rates to be exact.

Q. Without use by bidders on government business of a common estimated land grant rate, do you see how it would be possible to have an identical delivered price or an identical government destination cost?

3745 The Witness: I feel sure that if all bidders used the same price bases and the same land grant, commercial or special rates, in figuring government destination cost, that they should arrive at the same figure.

Examiner Norwood: Well, is it possible to arrive at that without using those identical factors?

The Witness: I do not believe it is.

By Mr Wooden:

3746 Q. In other words, in order to have an identical government destination cost, the bidders have to use an identical land grant factor?

A. I believe that is true.

Q. Plus, as you said before, an identical base price to begin with?

A. That is right.

3747 Q. Mr. Reiter, referring to Exhibit 841-P, you were informed there that, on the land grant rates to Newkirk, New Mexico, some of the California companies had made a mistake by using a 63½-cent rate when the correct rate was 59½ cents. That is the difference in the rate per hundredweight?

A. That is right.

Q. And the rate per barrel would be 3.8 times that?

A. That is right.

Q. Will the difference in the way those rates were calculated at one time and the way they were calculated at another, run somewhat between 15 and 20 cents per barrel?

A. Yes, Mr. Wooden, but I am sure that he was referring there to the commercial rate and if it was the land grant all the way, the difference would be one-half of that amount.

(Discussion off the record.)

Q. When you use the 3.8 factor in multiplying the rate per hundredweight, is that on a sack basis?

A. That applies only to cement in sacks and not in bulk.

Q. Either cloth or paper?

A. The weight in either cloth or paper is the same.

Q. What would be the effect on a mill's mill net from using an incorrect rate that was higher by as much
3748 as 2 to 4 cents per hundredweight?

A. If the government destination cost was based on that mill, the net at that mill would be increased by the amount that the computed land grant rate was greater than the actual used.

Examiner Norwood: Well, if it were less, what would be the result?

The Witness: The result would be that, with the conditions stated, the mill would receive a correspondingly less net at their mill.

By Mr. Wooden:

Q. In this case it was more, however, according to the statement of the correspondent?

A. That is correct.

Q. Referring to Exhibit 841-JJ, the Universal Atlas Company reported that the destination cost at McAlpin, Florida, is determined by using the Jacksonville commercial rate. Can you explain how that would be and why it would not be determined by using any land grant rate?

A. That would be because the price base at Jacksonville, plus the applicable commercial rate, made a lower sum than any other price base plus any land grant rate.

Q. And is it that same principle which determines which is the applicable basing point in any given transaction; that is, it is the sum of the lowest base price plus the
3749 lowest freight rate?

A. Yes, sir.

Q. That is, the combination of the two, whichever makes the lowest combination? That is what I am getting at.

A. Let me state it, so as to be sure.

Q. That is better.

A. The goverment destination cost would be the lowest sum of any price base plus the applicable lowest rate available to the government, whether land grant, special or commercial.

Q. And I wanted to extend that into the commercial purchases, and have you stated to what extent the same principles applied there.

A. Ordinarily the destination price—let me say the commercial destination price—is the lowest sum of any base price plus the applicable commercial freight rate.

Q. I think we stated it essentially the same, only in different words.

A. I think so.

3750 Q. Is the paper marked 842 for identification an authentic circular of the Code Authority? (Handing paper to witness.)

A. (Witness examining paper.) It is.

Q. Dated November 26, 1933?

A. Yes.

Mr. Wooden: I offer it for the record.

3751 (COM EX. 842 was offered and received in evidence.

3752 Q. Showing you exhibits for identification 843-A and B, can you identify them, Mr. Reiter, as authentic reproductions of correspondence from the files of the Code Authority?

A. I so identify it.

3753 Q. Was the ruling of the Code Authority to the effect that, on a contract with a state for a continuing purchase of cement, where the freight rate surcharge was in effect at the beginning of the contract and later was withdrawn, that the state was not entitled to a reduction equivalent to the amount of that freight surcharge?

3754 The Witness: I have not read this letter thoroughly. I would like to have it back to refresh my memory if I am to give an answer to that question.

3755 Mr. Wooden: He identified the paper and I thought he had had time enough to know what the contents of the paper were. I will be glad to have him look at it now.

Examiner Norwood: That is marked 843, is it?

Mr. Wooden: Yes.

Mr. Leisure: 843-A and B.

Mr. Zimmerman: Now, will you read that question for me?

(The reporter read the question referred to.)

The Witness: I do not know.

3757 (COM. EX. 843-A and B was offered and received in evidence.)

3758 Examiner Norwood: Is there a question pending?

Mr. Wooden: It was an effort to epitomize the contents of the two papers and see whether it was an epitomy of it.

Examiner Norwood: Now, can you answer the question?

The Witness: I believe the question was to the effect asking me whether it is the fact that in this case the Chairman of the Code Authority ruled that under a contract entered into before the code period and including the usual freight and tax provision under the standard form of contract under the code, if after this freight surcharge was removed, the Code Authority ruled that that allowance could properly be made to the customer. This answer

3759 to me is transmitting the opinion of our attorney as to two different cases showing discrimination, and in this case the member of the industry invoiced the customer at a destination price less freight and tax.

3760 By Mr. Wooden:

Q. That is in reference to the surcharge?

A. Interpreting the freight surcharge as a tax. Then, since the surcharge was removed, the customer was invoiced by this company at the destination price in the contract less one item representing the sum of the freight surcharge.

The point of this to me is that it says here "Other customers of this cement company are being invoiced at the destination price less freight only."

The effect of this opinion was that that constituted a discrimination as between customers of this member of the industry and therefore was incorrect, under the code.

Q. And the amount of the discrimination was the amount of the surcharge allowance?

A. Yes, I think that follows, Mr. Wooden.

Mr. Wooden: Your Honor, I suggest that we devote the

remainder of our few minutes to receiving papers to be tendered under the subpoenas duces tecum.

Examiner Norwood: Very well.

"Mr. Leisure: These are further papers on North American—20 pages.

Examiner Norwood: By whom were these tendered?

Mr. Leisure: North American.

Examiner Norwood: Mark that 844 for identification A to T.

3761 Mr. Leisure: A second batch of 23 pages.

Examiner Norwood: Mark that 845-A to W for identification.

Mr. Leisure: The next is 76 pages.

Examiner Norwood: Still from North American?

Mr. Leisure: Yes, sir.

Examiner Norwood: 846-A to XXX.

Mr. Leisure: The next is 50 pages.

Examiner Norwood: 847-A to XX.

Mr. Leisure: The next is 271 pages.

Examiner Norwood: 848-A to 11-K.

Mr. Leisure: The next is 18 pages.

Examiner Norwood: 849-A to R.

3762 Mr. Leisure: The next is 12 pages.

Examiner Norwood: 850-A to L for identification.

Mr. Leisure: The next is 48 pages.

Examiner Norwood: 851-A to VV for identification.

Mr. Leisure: The next is 104 pages.

Examiner Norwood: 852-A to 5Z.

Mr. Leisure: The next is 70 pages.

Examiner Norwood: 853-A to RRR.

Mr. Leisure: We can put the rest of these in tomorrow morning, Your Honor."

(Each document thus produced was marked for identification as indicated by the directions of "Examiner Norwood.")

3764 Washington, D. C.,
Thursday, February 24, 1938.

3765 Mr. Wooden: Your Honor, this is the return date on the subpoenas duces tecum, even after the extension of time which was granted, and I suggest that we proceed to a report of such compliances as are now ready.

Mr. Leisure: When we adjourned yesterday, I was offering some of the papers which had been furnished by North American. Shall I just continue that?

Examiner Norwood: Yes.

"Mr. Leisure: The next is a file of papers consisting of three sheets.

Examiner Norwood: Mark them 854 for identification, A to C.

Mr. Leisure: Next is a file consisting of 151 pages.

Examiner Norwood: Mark them 855 for identification, A to 6-U, inclusive.

3766 Mr. Leisure: The next is a file consisting of 64 pages.

Examiner Norwood: 856-A to LLL.

Mr. Leisure: The next is a file consisting of 6 pages.

Examiner Norwood: 857A to F.

Mr. Leisure: Next is a file consisting of 175 pages.

Examiner Norwood: Mark that for identification 858-A to 7-S.

Mr. Leisure: Next is a file consisting of 79 pages.

Examiner Norwood: Mark that 859-A to 4-A for identification.

3767 Mr. Leisure: Next is a file consisting of 27 pages.

Examiner Norwood: Mark that 860-A to AA.

Mr. Leisure: Next is a file consisting of 25 pages.

Examiner Norwood: Mark that 861-A to Y.

Mr. Leisure: Next is 2 pages.

Examiner Norwood: Mark that 862-A and B.

Mr. Leisure: Next is one page.

Examiner Norwood: Mark that 863 for identification.

Mr. Leisure: Next is 117 pages.

Examiner Norwood: Mark that 864-A to 5-L, for identification.

Mr. Leisure: Next is a file consisting of 113 pages.

Examiner Norwood: Mark that 865-A to 5-I for
3768 identification.

Mr. Leisure: Next is a file consisting of 82 pages.

Examiner Norwood: Mark that 866-A to 4-D for identification.

Mr. Leisure: Next is a file from the Alpha Portland Cement Company consisting of 234 pages.

Examiner Norwood: Mark that 867-A to 9-Z for identification.

Mr. Leisure: The next is a file from the same company (Alpha) consisting of 217 pages.

Examiner Norwood: Mark that 868-A to 9-I for identification.

Mr. Leisure: Next is a file from the same company (Alpha), 76 pages.

3769 Examiner Norwood: Mark that 869-A to XXX for identification."

(Each document thus produced was marked for identification as indicated by the directions of "Examiner Norwood.")

3770 "The next is a company known as the Giant Portland Cement Company.

Examiner Norwood: How many sheets?

Mr. Leisure: 443 sheets.

Examiner Norwood: 870 for identification A to 18-A.

Mr. Leisure: The next file is that of the Ideal Cement Company, consisting of 35 sheets.

Examiner Norwood: Mark that 871-A to II for identication.

Mr. Leisure: The next is a file of a company not under subpoena, but a subsidiary of the Ideal. It is known as the Union Portland Cement Company—13 sheets.

Examiner Norwood: That is a subsidiary of what? Of the Ideal?

Mr. Leisure: Yes, sir.

Examiner Norwood: Mark that 872 for identification A to M.

Mr. Leisure: The same applies to the next file.

3771 It is a subsidiary of the Ideal Company and its name is Oklahoma Portland Cement Company.

Examiner Norwood: How many sheets?

Mr. Leisure: 19 sheets.

Examiner Norwood: Mark that 873-A to S.

Mr. Leisure: The same statement applies to the next file. It is a subsidiary of the Ideal Company and its name is Colorado Portland Cement Company.

Examiner Norwood: How many sheets?

Mr. Leisure: 44 sheets.

Examiner Norwood: Mark that 874-A to RR for identification.

3772 Mr. Leisure: The same statement applies to the next file. It is a subsidiary of the Ideal Company. Its name is Three Forks Portland Cement Company—consisting of 80 sheets.

Examiner Norwood: 875-A to four B's.

Mr. Leisure: The same statement applies to the next file, a subsidiary of the Ideal Company. The name is Nebraska Cement Company,—consisting of 10 sheets.

Examiner Norwood: Mark those 876-A to J for identification.

Mr. Leisure: The next file is that of the Hermitage Portland Cement Company, 14 sheets.

Examiner Norwood: Mark those 877-A to N for identification.

Mr. Leisure: The next file is that of another company, the Kosmos Portland Cement Company, 61 sheets.

Examiner Norwood: Mark those 878-A to three I's for identification.

3773 Mr. Leisure: The next file is that of the Lone Star Cement Corporation, consisting of 67 sheets.

Examiner Norwood: Mark those 879-A to three O's for identification.

Mr. Leisure: The next is the Medusa Portland Cement Company, 19 sheets.

Examiner Norwood: Mark those 880-A to S for identification.

Mr. Leisure: The next is the National Cement Company of Alabama, 8 sheets.

Examiner Norwood: Mark those 881-A to H for identification.

Mr. Leisure: The next is the Nazareth Cement Company, 153 sheets.

Examiner Norwood: Mark those 882-A to six W's for identification.

3774 Mr. Leisure: The next is the Pennsylvania-Dixie Cement Corporation, 148 sheets.

Examiner Norwood: Mark those 883-A to six R's for identification.

Mr. Leisure: The next is the Ash Grove Lime & Portland Cement Company, 12 sheets.

Examiner Norwood: Mark those 884-A to L for identification.

Mr. Leisure: Next is a file of the Cement Institute consisting of 444 sheets. That subpoena was served on Mr. Reifer.

Examiner Norwood: Mark those 885-A to eighteen B's for identification."

(Each document thus produced was marked for identification as indicated by the directions of "Examiner Norwood.")

Mr. Leisure: Those are the papers that I have in court this morning. I think we will have some more probably at two o'clock. I want to say, your Honor, that the companies are doing their best to come under the wire and finish today. Some of them have informed me that it is impossible,
3775 and one company informed me last night that they had spent some eight hundred hours with thirty men working on this, so we are doing our best to come under the wire.

Mr. Wooden: You will be able to state this afternoon, Mr. Leisure, which ones have fully complied and which ones require more time?

Mr. Leisure: I will make an effort to do that.

Mr. Wooden: And some have had full compliance by this time?

Mr. Leisure: That may be. There are two other things. One is the question of the N. R. A. material. I have been informed that some of the companies have not construed that to be under the subpoena. If Mr. Wooden wants that I personally have no objection to its being produced, but I would like to know what his attitude is, and I can then take it up with the companies. It is our position on that that if that material were wanted, the Code Authority should have been named in the Schedule C, but I see no good purpose in having the Commission serve another subpoena and going through that if he wants it.

Mr. Wooden: We did intend to include that, and we interpret the subpoena as including it in so far as it comes under the subject matter contained in the subpoena and to the facts named in the subpoena.

3776 Mr. Leisure: I will take it up then. It may be that some of that material will be coming in later and will be sent to us. Some of them have and some of them have not. My associate just informs me that we have al-

ready furnished, and that you have, one complete set of all the Code Authority material. I do not see any good purpose being served and having them send us duplicates, if that is so.

Mr. Wooden: In so far as the circular matter, I would appreciate that and agree to that.

Mr. Leisure: That is what I am talking about.

Mr. Wooden: There were of course a great many things relating to the N. R. A. and the code which were the subject matters of correspondence as distinguished from circular matter itself from the Code Authority.

Mr. Leisure: I will have to take that up with the companies, your Honor, and see what they say.

Examiner Norwood: All right.

Mr. Leisure: Last night as I left the court, I received the order from the Commission that our motion relating to the answers to the questionnaires was denied, and that they should be furnished. I will have to confer with my associate counsel today and determine what they want to do about that.

Examiner Norwood: Yes.

3777 Mr. Leisure: And we will do that.

Examiner Norwood: All right.

3778 Mr. Wooden: So far as the Clark and Burns material in the hands of the Institute counsel is concerned, of course there is no return on that necessary today.

Mr. Leisure: I am glad you mention that. We accepted service on behalf of the Cement Institute on that material and that subpoena was returnable, I think, March 4 if I am not mistaken.

Examiner Norwood: Yes.

Mr. Wooden: Are there some others who have a report of partial or of full compliance with the subpoena?

"Mr. Hershberger: I have some material.

Universal Atlas Cement Company proffers to the Trial Examiner 169 pages, each being identified in the lower left-hand corner by a number. They are respectively as follows:

2-R, 3-R, 5-R, 6-R, 8-R, 9-R, 11-R, 13 to 15 inclusive, each followed by the letter R, 17 to 20, inclusive, each followed by the letter R, 27 to 32, inclusive, each followed by the letter R, 40 to 44, inclusive, each followed by the letter R, 46-R, 47-R, 51 to 53, inclusive, each followed by the let-

ter R, 59 to 80, inclusive, each followed by the letter R, 82 to 90, inclusive, each followed by the letter R, and 93 to 200, inclusive, each followed by the letter R—
3779 169 pages in all.

Examiner Norwood: Mark them 886 for identification, A to 7-M.

Mr. Hershberger: In addition to that, Universal Atlas also proffers to the Trial Examiner a file of papers—I think they are all mimeographed papers—from the Cement Institute—

Examiner Norwood: Is that from the Atlas files?

Mr. Hershberger: Universal Atlas Cement Company, yes—the number of which is not known. I suppose we can mark those A to Blank.

Examiner Norwood: Mimeographed matter?

Mr. Hershberger: Yes.

Examiner Norwood: Mark them 887-A to blank for identification.

Mr. Hershberger: Another folder of miscellaneous matter from the Cement Institute and other sources, the number of which sheets I do not know. I would like to have those marked A to blank.

Examiner Norwood: Correspondence and things like that?

3780 Mr. Hershberger: That is right.

Examiner Norwood: Mark them 888-A to blank for identification."

(Each document thus produced was marked for identification as indicated by the directions of "Examiner Norwood".)

Mr. Hershberger: Now, in addition to that, copies of a number of exhibits which have already been put into the record have been found to be in our files and I have a list of those which I will read. I spoke to Mr. Wooden some time ago about this and he said it would be satisfactory to furnish a list of those without proffering the documents here again.

Mr. Wooden: Yes, if they are already in evidence.

Mr. Hershberger: These are the numbers, copies of which we have in the files and which we can get for you if you want them.

Exhibit 637-A to F.

Exhibit 634-A to E.

Exhibit 634-F to M.

Exhibit 701-A to G.
Exhibit 607-A to blank.
Exhibit 608-A to blank.
Exhibit 754-A to N.
Exhibit 611-A to blank.
Exhibit 614-A to blank.
3781 Exhibit 755-A to E.
Exhibit 616-A to blank.
Exhibit 756-A to D.
Exhibit 617-A to blank.
Exhibit 618-A to blank.
Exhibit 597-A.
Exhibit 620-A to blank.
Exhibit 621-A to blank.
Exhibit 637-R to U.
Exhibit 622-A to blank.
Exhibit 599.
Exhibit 624-A to blank.
Exhibit 600.
Exhibit 637-CC to EE.
Exhibit 625-A to blank.
Exhibit 603-A to blank.
Exhibit 626-A to blank.
Exhibit 639-A to blank.
Exhibit 627-A to blank.
Exhibit 628-A to blank.
Exhibit 729-A to blank.
Exhibit 677.
Exhibit 642-C.
Exhibit 762-A to C.
Exhibit 639-A to blank.
3782 Exhibit 676.
Exhibit 727.
Exhibit 674.
Exhibit 672-A and B.
Exhibit 666-A to C.
Exhibit 639-A to blank.
Exhibit 729-A to F.
Exhibit 726-F.
Exhibit 726-G.
Exhibit 725-A.
Exhibit 500-F.
Exhibit 639-A to blank.
Exhibit 680-A to blank.

Exhibit 679.
Exhibit 642-B.
Exhibit 639-A to blank.
Exhibit 138-1A
Exhibit 138.
Exhibit 610-A to blank.
Exhibit 543-P.
Exhibit 598-A to blank.
Exhibit 606-A to blank.

Now, if I have read any of those twice, it merely indicates that we have two sets in the files and in making it up, they happened to get the numbers down twice.

3783 I am informed by the man who made up the statement I have just read, that after examining the transcript, he was able to tell from the statements in the record accompanying the offer or proffer of these numbers that I have read, what they were and from that method, identified copies which we have in our files. So, if it is desired to make a check on any of those we will be glad to do it.

3784 Now, all these documents are proffered, of course, subject to the same objections which we have previously referred to.

Examiner Norwood: Yes.

Mr. Hershberger: And I might say that this is not a completion. We just cannot get through. I think we will be able to be through within another week or ten days. I have this morning a large folder of some material which I have not looked over, and we just cannot finish. We have had a large corps of men at work on it.

Mr. Wooden: You will have some more this afternoon?

Mr. Hershberger: I will have some more this afternoon if I can get at it this noon, and if you desire, we will continue next week, if we can get through.

Mr. Wooden: We will see what the situation is. May I ask whether the material from the New York office has yet been furnished?

Mr. Hershberger: Not all of it. I have not had an opportunity to look it all over yet. I have looked over some of it.

Mr. Wooden: It will all come to you?

Mr. Hershberger: It will all come to me.

Mr. Wooden: All of it has not already come?

Mr. Hershberger: It has not. These 169 pages
3785 that I put in first this morning are from the New York office.

"Mr. Jaques: On behalf of the Lehigh Portland Cement Company, in response to the subpoena served on Joseph S. Young, president, on the secretary of the company, and on Mr. B. H. Rader, vice president, I proffer a folder marked L. P. C. Co., 64 pages, 2-24-38, No. 1, Cement Information Bureau.

Examiner Norwood: That will be marked 889-A to triple L for identification.

Mr. Jaques: I also proffer a folder marked L. P. C. Co., 40 pages, 2-24-38, No. 2, also marked "Tariff Committee of the Cement Institute."

Examiner Norwood: That will be marked 890-A to NN for identification.

Mr. Jaques: I also proffer a folder marked L. P. C. Co., 173 pages, 2-24-38, No. 3, and in addition marked "Public Relations Committee of the Cement Institute."

Examiner Norwood: That will be marked 891-A to seven Q's."

(Each document thus produced was marked for identification as indicated by the directions of "Examiner Norwood".)

3786 Mr. Jaques: I have delivered these on the same basis as heretofore, subject to the same motions, and I hope to have some more material at two o'clock, and I think by tomorrow morning or the next day, I will have substantially everything from our company.

Mr. Hershberger: May I ask you a question off the record, Mr. Wooden?

(Discussion off the record.)

Examiner Norwood: Are there any further papers to offer?

"Mr. Heffernan: Yes, Your Honor. In behalf of Green Bag Cement Company of Pennsylvania, I should like to submit to the Trial Examiner in response to the subpoena duces tecum certain materials marked for identification G. B. P. No. 1 to G. B. P. No. 16 inclusive, with the date 2-24-38 on each, and the number of pages indicated on each. The first group, No. 1, consists of one page.

Examiner Norwood: Mark that 892 for identification.

Mr. Heffernan: The second group consists of 15 pages.

Examiner Norwood: Mark that 893-A to O for indentification.

3787 Mr. Heffernan: and the third group consists of 5 pages.

Examiner Norwood: Mark that 894-A to E for identification.

Mr. Heffernan: And the fourth group consists of 2 pages.

Examiner Norwood: Mark them 895-A and B for identification.

Mr. Heffernan: And the fifth group consists of two pages.

Examiner Norwood: Mark them 896-A and B for identification.

Mr. Heffernan: And the sixth group consists of 18 pages.

Examiner Norwood: Mark those 897-A to R for identification.

3788 Mr. Heffernan: And the seventh group consists of 4 pages.

Examiner Norwood: Mark those 898-A to D for identification.

Mr. Heffernan: And the eighth group consists of 3 pages.

Examiner Norwood: Mark those 899-A to C for identification.

Mr. Heffernan: And the ninth group consists of 4 pages.

Examiner Norwood: Mark those 900-A to D for identification.

Mr. Heffernan: The tenth group consist of 297 pages.

Examiner Norwood: Mark those 901-A to twelve K's.

3789 Mr. Heffernan: The eleventh group consists of two pages.

Examiner Norwood: Mark those 902-A and B for identification.

Mr. Heffernan: And the twelfth group consists of 47 pages.

Examiner Norwood: Mark those 903-A to UU for identification.

Mr. Heffernan: And the thirtenth group consists of thirteen pages.

Examiner Norwood: Mark those 904-A to M for identification.

Mr. Heffernan: The fourteenth group consists of 174 pages, counting a newspaper which is included as one page.

Examiner Norwood: Mark those 905-A to seven R's for identification.

Mr. Heffernan: And the fifteenth group consists of
3790 23 pages.

Examiner Norwood: Mark those 906-A to W for identification.

Mr. Heffernan: and the sixteenth group consists of 27 pages.

Examiner Norwood: Mark those 907-A to AA for identification."

(Each document thus produced was marked for identification as indicated by the directions of "Examiner Norwood.")

Mr. Heffernan: As to most of these exhibits submitted, copies are attached, and I make the same request to substitute the copies for the originals when the Commission has satisfied itself that they are true copies.

Examiner Norwood: Very well.

Mr. Heffernan: I would like to state also that those materials are submitted as in complete compliance so far as we have been able to find. It is all that we have found that we believe are in compliance and as required by the subpoena, and I think we have completed our search. I might state also that the plant of the Green Bag Cement Company of Pennsylvania is located on Neville's Island in the
3791 city of Pittsburgh or in the metropolitan area and was under water in the great flood out there, I think in January, 1937, and at that time a substantial part of the files were destroyed, so it might be that letters would turn up to other people that we do not have.

3795 Mr. Wooden: Is this the only thing from the Aetna files?

Mr. Leisure: You understand, they were not subpoenaed.

Mr. Wooden: I understand.

Mr. Leisure: But a copy was sent to us.

Mr. Wooden: I am not quite sure how to handle this.

Examiner Norwood: Mark that copy Commission's Exhibit 909 for identification.

(Document referred to was marked for identifica-
3796 tion "Commission's Exhibit 909.")

Mr. Wooden: The document just produced has

been numbered 909 for identification and I offer it at this time, Your Honor.

Mr. Leisure: May I look at it?

Examiner Norwood: Is there any objection?

Mr. Leisure: We have no objection, Your Honor.

(COM. EX. 909 was offered and received inevidence.)

Mr. Wooden: I understand, Mr. Leisure, that this is the letter or a copy of the letter that was asked for when the witness Cree was on the stand.

Mr. Leisure: I think that was the letter that was referred to when Mr. Cree said something flashed before his eyes. That is a letter bearing the approximate date.

3797 Mr. Wooden: Mr. Leisure, I would like to inquire whether or not a copy of the letter from Mr. Crapo to Mr. Johnson, Exhibit 909, was furnished to you by Mr. Johnson?

3798 Mr. Leisure: It was either furnished by him or his secretary. It came by mail.

3805 GEORGE H. REITER, a witness previously sworn, resumed the stand and testified further as follows:

Direct Examination by Mr. Wooden (Continued).

Q. Mr. Reiter, was the increasing proportion of the government's purchases of cement a factor in the Institute beginning its compilation and distribution of land grant rates in the latter part of 1936?

A. Not so far as I know, Mr. Wooden.

Q. What particular factors were responsible for the beginning of that activity at that particular time?

3806 A. Well, I don't know except as I have already said, that several or many members of the industry to my knowledge had for same time been interested in the Cement Institute collecting and disseminating information on land grant rates, and it was authorized by the Board at this time.

Q. How many such members had there been up to that time?

A. It would be purely an estimate on my part, but I imagine I have heard an expression of opinion from at least eight or ten members of the Cement Institute on that matter.

Q. My question was how many had been engaged in collecting and preparing such information prior to that time?

A. So far as I know, no member of the Cement Institute had been collecting any lists of land grant rates. They had of course in their files much information on land grant rates, which they had used or secured for their own bidding purposes.

Q. And sometimes those land grant rates were filed with the Code Authority or the Institute even prior to the publication?

A. No, they were not, Mr. Wooden.

Q. The government destination costs, however, which were filed included land grant rates,, is that correct?

A. Well, as has been described, the land grant rates were usually a part of the government destination cost.

Q. Referring to this Exhibit 843-A and B that I directed your attention to yesterday, do you remember the case?

3807 A. I remember reading the latter, yes.

Q. I notice the statement is made that after the freight surcharges was removed, the company had been invoicing the customer at the destination price as before less one item representing the sum of the freight in an amount equal to the surcharge no longer required, while other customers of the same company were being invoiced at the destination price less the freight only. I believe you agree that the amount of discrimination that was involved was represented by the amount of the surcharge.

A. It appears to me to be so as between those two cases.

Q. Well, now, in the cases where the freight was deducted after the surcharge had been removed, I take it that that surcharge then had the effect of increasing the mill net of the mill?

A. Yes, but Mr. Wooden, the common form of specific work contract provided a top limit to the price but not a lower limit.

Q. I understand that.

A. And therefore, the terms of the contract might be carried out with the deduction of only the freight without the deduction of the surcharge.

Q. That might be but still where the freight only was deducted after the surcharge was removed, that had the effect of increasing the mill net by the amount of the

3808 surcharge, didn't it?

A. That is right.

Q. Then the discrimination which was held to exist in the circumstances was arrived at by a comparison of the mill nets in the two classes of cases, was it not?

A. I assume that the answer to that quesion may be yes. If there was any discrimination between customers, the Code Authority would be concerned about it. Now, I have said that in these two examples, the measure of discrimination as I understand the case, is in the amount of the surcharge. Does that make a complete answer, Mr. Wooden?

Q. I believe, coupled with what you have already said in answer to other questions, I believe it does, but the Code Authority attorney held that that constituted a discrimination in price, I believe?

A. Yes.

Q. Wasn't it on the basis of a comparison of the mill net that such holding was made?

A. No, I don't see it that way. It was rather the cost of the product to the customer.

Q. Yes, but they took out the freight in the one case and they took out the freight plus the surcharge in the other, isn't that correct?

A. Yes, that is right.

Q. And the amount of that surcharge operated to
3809 increase the mill net in one class of cases?

A. I believe that is right.

Q. And the amount of that surcharge was the amount of the discrimination?

A. Yes, in the customer's price.

3811 Q. I take it, Mr. Reiter, that the compilation of land grant rates and their distribution met some particular need which the industry had encountered?

A. We thought it did when we undertook it.

Q. And what was that need?

A. All I can say is that it furnished the members the best information that we had available as to land grant rates which were used in bidding to the United States government.

Q. I am showing you papers marked for identifi-
3812 cation 910-A and B. Will you accept them as authentic papers from the files which were under your supervision and the Code Authority and the Cement Institute?

A. Yes.

Mr. Wooden: I offer them for the record.

3813 (COM. EX. 910-A and B was offered and received in evidence.)

By Mr. Wooden:

Q. I notice in this circular from the Code Authority, Exhibit 910-A, that the industry was directed to
3814 include their prices to every point of destination to which they normally quoted. Did you ever send out any notice that they should also include their f. o. b. mill prices?

A. That statement was included in several—both general and special—letters sent out by the Code Authority.

Q. Which statement do you refer to, Mr. Reiter?

A. That they should file their prices which they had f. o. b. their mill as well as destination prices.

Q. You did, then, call for filing of mill prices as well?

A. This was the only call that went out for the filing of prices other than the provision of the code itself which each member of the industry had, at the time the code became effective. It became effective the day before the date of that letter.

Now, I say the members of the industry fully understood that they should file all of their prices whether destination or mill prices both, from general letters of the Code Authority and special letters from the members and answers to the members upon inquiry.

Q. I understood from your previous testimony that you had very few filings of mill prices.

A. Comparatively few, that is true.

Q. And I have not seen the sort of directions to file mill prices that you refer to.

A. Well, they are in the files of the Code Author-
3815 ity which the Federal Trade Commission have, but I will admit not at this time.

May I say further, that that general letter to members of the industry was dictated by the first Chairman of the Code Authority, Mr. Rader, from New York. I had a copy in my file and what I think he was doing was to advise members of the industry that we were equipping ourselves to handle this mass of destination prices which he knew to be the general custom of quoting in the industry.

Q. Did you ever inform the Huron Company that they should not file mill prices?

A. I have a very hazy memory of the Huron Company having sent us a letter not filing prices f. o. b. mill, but saying, in effect, that they were filing destination prices based on the following named bases, and that was refused inasmuch as it would have put the burden on us of figuring for them their destination prices. Now, as I say, my memory is hazy concerning that, but I think that is in substance correct.

Q. And did you consider it a violation of the code for members not to file their mill prices?

A. No, sir.

Q. Even though you sent out notices to them that they should do so?

A. We did not send out notices to them that they
3816 should file mill prices.

Q. I misunderstood these general notices you referred to. Will you clear me up on that?

A. Well, what we expressed more than once to the industry was that it was proper under the code and necessary under the code provisions for each member of the industry to file all of their price terms both f. o. b. mill and f. o. b. destination.

Q. Well, in response to that, did you get filings f. o. b. mill except in a few instances?

A. We did get filings f. o. b. mill. Whether it was in response to letters or in compliance with the code itself, I can not say.

Q. Did you get filings in the form of basing point prices?

A. So far as I remember—

Mr. Zimmerman (interrupting): Just a moment. Do you mean by that where they designated them as basing point prices?

Mr. Wooden: A price applicable at a certain basing point.

Mr. Zimmerman: Designated as such?

Mr. Wooden: Yes.

The Witness: I have described to the best of my memory an attempted filing by the Huron Company, which was
at that time and is now in my opinion, an incorrect
3817 filing under the existing code. There was no other instance of that kind that I remember, but to me a

price is a figure at which goods change hands, and therefore a so-called basing price is not a price to me. A price f. o. b. mill is a price.

By Mr. Wooden:

Q. Unless the goods changed hands at that price. That might be in some cases of a basing point mill?

A. Oh, yes. It was in some cases.

Q. You consider price as the figure at which the goods change hands. That includes what the seller actually receives for his product and what the buyer pays to the seller?

A. That is right.

Q. I am not clear yet whether or not during the code period or at any time subsequent to the code period you had filed with you prices applicable at certain basing points.

Mr. Zimmerman: Will counsel add to his question so as to clarify it, that he means by that, designated by the filer as basing points or basing point prices? Then it is perfectly simple for the witness to recall if he can whether or not anybody ever filed a price which was designated as a basing point price.

Examiner Norwood: Will the counsel make that satisfactory?

Mr. Wooden: I have no particular objection, but I
3818 see no reason why my question is not perfectly all right as it stands.

The Witness: I know no other way to answer your question, Mr. Wooden, except to say that we did have filed with us in some instances prices f. o. b. mill, and probably some of those mills were so-called basing points.

By Mr. Wooden:

Q. Was that during the period the Trade Practice Committee was functioning after the N. R. A. Code, as well as during the code period?

A. To the best of my memory we had prices f. o. b. mill filed after May 27, 1935, as well as before.

3819 Q. Did you have in your office knowledge of what points were basing points?

A. I myself had some knowledge which I had gained from members of the industry of points which were basing points. That knowledge was by no means complete. In specific instances, I may have had such knowledge.

Examiner Norwood: But you had that information in your office, didn't you?

The Witness: No, sir, it was in no way necessary to my work.

By Mr. Wooden:

Q. Did you or your office receive at any time a list of basing points?

A. I have seen such a list.

Q. Well, did you or your office receive such a list?

A. I think I had in my possession during part of this time a copy of a list of some basing points that were listed by a cement company for their own use.

Q. Did it contain the basing point prices as well as the list of points?

A. It contained a list of some basing points and the price base in figures.

Q. Did you pass on to any members of the industry the information that was contained in such a list?

A. I did not.

3820 Q. What use did you make of it?

A. I don't know that I made any use of it. It was a matter of interest to me.

Q. What was the company that had compiled it?

A. I beg your pardon?

Q. What was the company that had compiled it for its own use?

A. The list that I had was one prepared by the Lehigh Company.

Q. Was it changed from time to time during the period you had such a list?

A. Well, to my knowledge such lists were necessarily changed from time to time, but I do not believe that I received notices of such changes at any time.

3821 Q. Mr. Reiter, I show you papers marked for identification Commission's Exhibits 911-A to V, inclusive. They are all photostats, I believe, of documents from the files of the Code Authority. Will you concede that they are authentic?

A. Yes, I identify those papers as communications to, and copies of letters from, the Code Authority.

Mr. Wooden: I offer them for the record.

3825 (COM. EX. 911-A to V was offered and received in evidence.)

Q. Mr. Reiter, as I understand it, the lowest price filed with the Code Authority was supposed to be the price toward which all others would gravitate?

3826. The Witness: It was my belief based on experience with open price filing during the code that a sale of standard cement could only be made at the lowest price at which it was offered for sale at any destination, and therefore we notified the members of our industry of the lowest price filed upon inquiry.

3827 By Mr. Wooden:

Q. Now, referring to these papers which comprise Exhibits 911-A to V, do they not include some cases where instead of the low price filed becoming effective with the others, that the filer of the low price increased his low price to the higher price filed by others?

A. There are some cases of that kind illustrated in there, yes, Mr. Wooden.

Q. Did you sometimes when a lower price was filed, take it up with the filer of that low price to ascertain whether he wanted to adhere to it or to change his price to that of others that were higher?

A. I do not like the form of your question, and if I can answer it in a way that I think will be specific in the end, I would like to do so.

Q. All right, try it.

A. We did advise members of the industry interested, from time to time of differences in prices filed with us by them and others, and there were several reasons for that. The first reason was that the code provided that all price terms should be filed with us within five days after the code became effective, which made the date for the filing December 12, 1933. By that time and in a few days thereafter, our office was entirely swamped with enormous lists of prices filed with us by members of the industry,

3828 and it was necessary for us at one time to have as many as thirty inexperienced clerks entering these filed prices on our cards. We attempted to give these clerks complete information, but some errors in posting the prices did occur, and the first reason then for calling the attention of the members to price differences was to check this initial and enormous work of posting these prices.

Q. Are not these cases here cases that did not involve errors in posting but assumed errors in the original filing?

A. I think they include that condition which I told you about, because we had well over 300,000 prices filed at something over 60,000 destinations, and we were some two months in posting all of these prices, and in attempting to check our clerical work of posting, we consumed probably a number of additional months. Now, Mr. Wooden, I do not mean to say that that was the only occasion in which we called differences of filed prices to the attention of our members, but I say it represents many of the cases you have in there. One I notice refers to two different prices filed for the same destination by the same company.

Q. We will come to some of the details later.

A. All right.

Q. Take this Exhibit 911-A and B. Did you call to the attention of the filing company that their price was 4 cents lower than competitors had filed, and the com-
3829 pany thereupon filed a price that was the equivalent of the higher price of competitors as filed?

A. I can, of course, Mr. Wooden; only interpret this from these papers. To me this indicates that the company mentioned here, Southern States, filed with us a copy of their quotation to a contractor, and we called attention to such prices among this list which were not effective under the terms of our code. That is my analysis of this. Because they have not been filed for five days.

Q. Well, did not the company in that case say that it was a typographical error in their first filing, and that the price should be a figure which was the same as the other price filed?

A. That is right; they did.

Q. Now, referring to 911-F, whose writing is that on the margin there? (Indicating.)

A. (Examining) I do not recognize the handwriting. It is not mine.

Q. It bears a date of 4-15-34, which is a few days after the date of the letter, is it not?

A. That is right. Six days after the date of the letter. (Examining paper.) I read this date as 4-5-34.

Q. Which was prior to the date of the letter?

A. Prior to the date of the letter.

Q. Well, the note is, "Filed 2.55 but corrected
3830 to 2.59, 4-5-34." There is no conflict there in the dates on that basis?

3831 A. Well, I can not explain that note, Mr. Wooden.

Q. What basis did you have for thinking that sometimes when a company filed a price that was lower than other companies had filed, that there was any error about it? What made you think that there was an error sufficiently to take it up with them?

A. I had no reason for thinking there was an error, and in that case we did not take it up alone with the company that was low, any more than we did with the company that was high. Sometimes, however, there was no indication of which was wrong. There might be only two companies had filed at a certain destination, and therefore the low price might just as well have been the prevailing price as the high price. However, if there were ten companies filed at a certain destination and nine of them filed the same price and one of them filed another price, whether that single exception was high or low, in order to save our own work we called it to their attention first.

Q. You have sometimes notified the filers of the price that was different that the prevailing price was something else, did you?

A. I think we have done that, in fact I know we have done it.

Q. What reason had you to believe or suppose that there was any mistake about the low price or about
3832 the different price being not intended?

Mr. Leisure: I think that has been answered and explained. He has not said that there was any mistake. He has explained why they did it.

Examiner Norwood: Read the question.

(The question is read.)

Examiner Norwood: Objection overruled; answer the question.

The Witness: I have said previously, Mr. Wooden, that—or I think I have said previously—that it is my belief that cement being a standard commodity can not successfully be sold at higher than the lowest price filed. Now, I have stated that the code gave all members of the industry the right to meet prices filed by their competitors, and in the instance I just cited, the only way they could have knowledge of those highest prices filed was through the method just described.

By Mr. Wooden:

Q. You said that you did not believe that cement could be sold successfully at a higher price than the low price?

A. That is correct.

Q. Do you not think it could be sold successfully at a lower price than the higher price?

Mr. Zimmerman: Is not that what he just got
3833 through saying—that it could only be sold at the low price?

The Witness: Let me say, Mr. Wooden, that however the price of cement is made, it will seek a level at the lowest price offered.

By Mr. Wooden:

Q. That may be. I will not dispute that with you at this time.

Here, in Exhibit 911-M, N and O, is that not a case where the company sold for $2.75 at a certain destination and after it was called to their attention that the company had previously filed at $2.81, the apparently prevailing price, that the company then restored its price to $2.81?

A. The facts of what happened are as stated by you in this change of price. I read, however, our reply to this first letter filing a price of $2.75 f.o.b. Blanket, Texas. Our reply states:

"Referring to your letter of May 2nd revising price to show Blanket, Texas, $2.75, cloth, price previously filed being $2.81 which is apparent prevailing price this destination. Advise if this is change in price."

In other words, if it is a change of price, according to the code, it must lie in the Code Authority office for five days before it can be used. That was the point of the letter and then it was changed back to $2.81.

3834 Q. Is the case represented by Exhibit 911-Q, R and S where a price was filed at a certain destination lower than others and you called it to the attention of the filer, whereupon he changed it to accord with the others?

A. That is correct.

Q. Referring again to 911-M, N and O, someone had written on the 911 "$2.81 is the correct price."

A. I read that on the letter, but I do not recognize the handwriting.

Q. Did you have an assistant, a Mr. Nelson, who wrote letters for you to sign about such matters?

A. Yes, sir. May I correct my answer to say that he both wrote letters for me to sign and had authority to sign my name on matters relating to price filing which he handled under my direction.

Q. You spoke of where there would be nine or ten companies filing one price and one company a different price, then you would call it to the attention of the one company that its price was different from the price of the others?

A. Yes, sir.

Q. Is 911-V a case where there were four companies filing a different price from the one, and you called the attention of the one that was out of line, to the price of the other four?

A. This may be an example of the case mentioned,
3835 or if there were three companies that filed the $2.30 price here, and four companies which filed the $2.32 price, the $2.32 price would still be the prevailing price?

Q. Suppose two companies filed the $2.32 price and one the $2.30 price. Then what? Would you call it to the attention of the one who filed the $2.30 price?

A. I think that was our policy.

Q. If you had a case where one filed the $2.30 and another $2.32, then what would you do?

A. As I said, our policy in that case would be to advise them both because there would be no prevailing price apparent to us.

Q. Did you have any method of checking, whereby you could tell whether the price, for instance, in such a case as that figured from a given basing point should be $2.30 or $2.32.

A. Of course, Mr. Wooden, I knew how to figure commercial prices from my experience in the cement business itself.

Q. Did that have a bearing, at times, on your assumption that somebody had made a mistake unintentionally and had figured it wrong from the wrong base or made an error in calculation?

A. I do not think it did.

Q. In these cases here where a low price was filed that was below the prevailing price, why did you not interpret that as an attempt on the part of the filer to compete at that point rather than ascertain whether or not he
3836 wanted to stand by that price?

A. At any time there was a single price filed at

any destination which was lower than any other prices filed and we received inquiry as to the prices filed there, we always replied, giving the low price and then what I believe happened was that the companies that had filed a higher price usually gave that lower filer competition.

Examiner Norwood: Would you send those low prices out to the trade as soon as they came in?

The Witness: Yes; every change in price.

Examiner Norwood: You sent to out to the entire membership?

The Witness: That is right.

By Mr. Wooden:

Q. In cases like these we are dealing with, did you send out copies of that lower price before you ascertained from the filer whether they intended to file that price and wanted to stand by it?

A. These are not examples of inquiries for prices filed at any destination, but if there were inquiries we would, in all cases, give the inquiring member the lowest price on file.

Q. My question, however, was whether in these cases, you would notify all the filers of a low price being filed at a certain destination before you ascertained from that low filer whether he intended to file that price and 3837 wanted to stand by it.

A. Mr. Wooden, whether the minority price was high or low, I have tried to describe the way we handled it; in other words, we would not give those who were in the majority the notice of the minority price until we had found out from the minority whether they wanted that price to stand.

Q. I am showing you a paper marked 912 for identification, purporting to be a copy of a filing made with the Code Authority by the Huron Company, January 10; 1934. Will you accept that as an authentic copy of a paper filed with the Code Authority?

Examiner Norwood: Just one sheet?

Mr. Wooden: One sheet; yes, sir.

The Witness: Mr. Wooden, this refers to a matter which I stated I hazily remembered this morning, but this paper is a copy and there is nothing on it except the name of the first charman of the Code Authority, which would indicate to me that it is a correct copy. It did not come from our department.

By Mr. Wooden:

Q. Is not that Mr. Nelson's handwriting on there?

A. No, it is not even his initials. His initials are J. L. Nelson and not L. J. N.

Q. You do not know whose writing it is?

A. No, I do not, Mr. Wooden.

3838 Q. Nor the writing in the lower right hand corner?

A. No, I do not.

Q. Does that refresh your recollection about the kind of prices the Huron Company filed with the Code Authority, whether or not they were base prices or destination prices?

3839 The Witness: I cannot say that it refreshes my recollection. As I testified this morning, I remember some so-called base prices filed with us by the Huron Company, and this is apparently a copy of the letter from the Huron Company to the Code Authority to that effect.

By Mr. Wooden:

Q. Were the base prices so filed posted?

A. If my recollection serves me, they were not.

3840 Q. I asked the witness to explain what he meant by "posting."

A. By "posting," I mean taking prices which were filed with the Code Authority and entering them upon filed cards provided for that purpose.

Q. Were the prices that were not posted, were they disseminated to other members of the industry?

A. No, sir.

3841 Q. Only posted prices?

A. That is right.

EVERETTE MacINTYRE, having been previously sworn, resumed the stand and testified as follows:

Direct Examination by Mr. Wooden.

(COM. EX. 912 was offered and received in evidence.)

3844 GEORGE H. REITER was recalled as a witness for the Commission and, having been previously duly sworn, testified further as follows:

Direct Examination (Continued)

By Mr. Wooden:

Q. Mr. Reiter, do you care to say anything further about the handwriting on Exhibit 912 which Mr. MacIntyre has just testified about?

A. I can not identify the handwriting, and the matter is not important to me, but this is not usually the
3845 form in which we tendered copies to the representatives of the Federal Trade Commission, and therefore I have no objection to Mr. MacIntyre's statement.

Q. Is it possible that there were duplicates of the same paper in the file and that you gave up one of the duplicates instead of making up a copy?

A. That is possible, but it is not in accordance with our usual practice.

Mr. Wooden: All right, thank you. I suggest now, Your Honor, that we proceed with the reception of the papers produced in response to subpoenas.

(Discussion off the record.)

Mr. Wooden: After the papers are produced and received, I propose that we take an adjournment to reconvene here on the morning of March 8 at 10 o'clock. This is in view of the fact that we can not have a hearing on the first two or possibly three days of next week as we had planned, and it comes down to a matter of my inability to go ahead under the handicap of extreme hoarseness plus the consideration that we do not wish to have counsel come back next week for as little as two days time.

I should like to have the record show that Mr. Reiter is again temporarily excused with the expectation that he will report again on the morning of March 8.

3846 I think that there ought to be some statement made or understanding regarding the subpoena that is returnable on the 4th of March, a week from tomorrow. It has been suggested informally that any papers produced under it could be submitted to Your Honor to remain in your custody unopened until the next session.

Mr. Leisure: That is my understanding and it is satisfactory.

Examiner Norwood: That is my understanding. They will be kept intact and brought by me and received on the

record as we have done heretofore. That applies to any papers that will be delivered to me between now and our next hearing.

"Mr. Jaques: I proffer a folder marked L. P. C. Co. with respect to the subpoena served on Mr. Young, president of the Lehigh Portland Cement Company, Mr. Rader, vice-president, and the subpoena served upon the secretary of that company. I proffer a folder marked L. P. C. Co., 255 pages, 2-24-38, No. 4. That is delivered on the same terms as heretofore, if Your Honor please, and subject to the same objections.

Examiner Norwood: It will be marked for identification 913-A to 10-U."

(Each document thus produced was marked for identification as indicated by the directions of "Examiner Norwood.")

3847 Mr. Jaques: Now, we are checking a lot of mimeographs and code papers and we expect to receive some additional papers tomorrow morning and I think that will be substantially all unless some scattering papers may be found.

Examiner Norwood: You may deliver them to me as you find them.

Mr. Jaques: We will get them down as fast as we can, Your Honor.

Examiner Norwood: Are there any further proffers?

"Mr. Hershberger: Yes, I have some.

Universal Atlas Cement Company proffers to Your Honor a number of sheets of correspondence marked, respectively as follows:

16-R, 21-R, 23-R, 33-R, 34-R, 35-R, 36-R, 37-R, 38-R, 39-R, 45-R, 48-R, 49-R, 50-R, 54-R, 91-R and 92-R. That is a total of 18 sheets.

Examiner Norwood: Mark them 914 for identification, A to R.

Mr. Hershberger: In addition to that, a file of the minutes of the meetings of the executive committee of the Cement Institute, meetings of the members of the Cement Institute, additions to minutes of the board of trus-

3848 tees, et cetera, the number of which documents we do not have. I suggest that we number them A to blank with the appropriate number.

Examiner Norwood: Mark them 915-A to blank for identification.

Mr. Hershberger: Here (exhibiting) is a group of papers which seem to be comments about code matters, in-

cluding some correspondence from the Cement Institute, the number of which is not known.

Examiner Norwood: How many pages?

Mr. Hershberger: I do not know.

Examiner Norwood: A small number?

Mr. Hershberger: 10 or 15, I guess. 9, your Honor.

Examiner Norwood: Mark them 916-A to J for identification.

Mr. Hershberger: Another folder of material which consists of executive letters of the Cement Institute, with perhaps some other material in it. I think that is substantially all that is in this file. There are quite a
3849 number of these papers. I do not know the number.

Examiner Norwood: Mark them 917-A to blank."

(Each document thus produced was marked for identification as indicated by the directions of "Examiner Norwood.")

Mr. Hershberger: That is proffered subject to the same objections to it being turned over to counsel for the Commission, as other material which has been offered by Universal Atlas Cement Company.

Examiner Norwood: The same objections and the same ruling. Is that tendered as complete compliance on the part of the Universal Atlas?

Mr. Hershberger: No, that does not complete the papers from Universal Atlas. There will be others here, I understand.

Mr. Leisure: I have here a file from the Giant Portland Cement Company. There are 40 sheets in that file.

Examiner Norwood: Mark them 918-A to NN for identification.

Mr. Leisure: The next file is that of the Lone Star Cement Corporation, consisting of 89 sheets.

Examiner Norwood: Mark them 919-A to 4-K.

3850 (Each document thus produced was marked for identification as indicated by the directions of "Examiner Norwood.")

Mr. Leisure: There may be others in the mail today. If there are, we will bring them over. As I understand it, if the companies mail them today, they will come within the extension period.

Mr. Woodgn: What do you propose to do with them?

Mr. Leisure: Give them to His Honor.

Examiner Norwood: Bring them in to me and I will present them here at the next meeting.

3852 Washington, D. C.,
Tuesday, March 8, 1938.

3853 Examiner Norwood: Pursuant to adjournment on February 24th, 1938, the hearing in this case is now convened in Docket 3167 in Room 434, offices of the Federal Trade Commission at 815 Connecticut Avenue, Washington, D. C.

The same appearance will be noted.

"Gentlemen, I have a number of papers that have been sent directly to me in response to the subpoena duces tecum. We will have to identify them and give them numbers.

There are three packages from the Universal Atlas Cement Company.

Mr. Hershberger: There should be four.

Examiner Norwood: We will mark the three now and the other one will no doubt turn up.

Mr. Hershberger: Off the record.

(Discussion off the record.)

Examiner Norwood: The first is a letter dated March 2, 1938 to this Trial Examiner from Mr. Hershberger enclosing 30 photostatic copies of papers in the files of the Universal Atlas Cement Company. These exhibits have come in a sealed package consisting of 30 photostatic copies and a letter from the Universal Atlas attorney, Mr. John H. Hershberger, and they will be marked 920-A to EE for identification.

3854 Examiner Norwood: Second is a sealed package from the Universal Atlas consisting of 40 photostatic copies and a letter from the counsel just named. They may be marked for identification 921-A to OO.

Mr. Hershberger: That was the letter of March 3?

Examiner Norwood: Yes. The third package from the Universal Atlas Cement Company, consisting of 58 photostatic copies and a letter from the counsel, John H. Hershberger, dated March 1, 1938. They may be marked for identification 922-A to GGG."

(Each document thus produced was marked for identification as indicated by the directions of "Examiner Norwood.")

Mr. Hershberger: I might state, your Honor, that on February 28 over my signature a letter was sent to you, Mr. Norwood, with 32 photostats which apparently you do not have here. They may be in your office. And I might state further that I have some others that I am ready to

proffer this morning if you want them, at any time, and some additional ones will be coming which I do not have ready today. We are not through, in other words.

3855 Examiner Norwood: Let us dispose of these mail packages, and then the counsel can present theirs.

Here are two packages from Milbank, Tweed & Hope concerning the Lehigh Portland Cement Company.

Mr. Paust: The covering letter was sent to you.

Examiner Norwood: I will turn these over to you as their counsel and you may present them in the regular way.

3856 Examiner Norwood: Do you want this to go in and be identified (indicating)?

Mr. Paust: Yes, I would like to have it.

Your Honor, on behalf of the Lehigh Portland Cement Company I proffer first a letter dated March 2, from the firm of Millbank, Tweed & Hope, addressed to you, referring to two packages which were sent to you under separate cover, and I ask that this letter consisting of two pages be marked for identification.

Examiner Norwood: That can go in along with the others there. We will include it in your first package there. What does the letter consist of, two pages?

Mr. Paust: The letter itself is two pages.

Examiner Norwood: That is from Lehigh Cement Company, is it?

Mr. Paust: That is right.

Examiner Norwood: 923-A to B for identification.

(The document was marked for identification "Commission's Exhibit 923-A and B.")

Mr. Paust: I now proffer the various files which are referred to in that letter, which were mailed to Your Honor, and which Your Honor has just turned over to me for the purpose of submission.

Examiner Norwood: All right.

3857 Mr. Leisure: I was not clear and I am not sure that the record is clear here, but is this letter to be offered into evidence, or is it merely so far just marked for identification?

Examiner Norwood: It is just identified.

Mr. Paust: The first file I proffer is marked L. P. C. Co. No. 1, consisting of 180 pages, 3-8-38.

Examiner Norwood: It is received for identification and marked 924-A to 7-X.

(The documents referred to were marked for identification "Commission's Exhibit 924-A to 7-X.")

Mr. Paust: The next file is marked L. P. C. Co. No. 8, 360 pages, 3-8-38.

Examiner Norwood: It is marked for identification Commission's Exhibit 925-A to 15-C.

(The documents referred to were marked for identification "Commission's Exhibit 925-A to 15-C.")

Mr. Paust: The next is marked L. P. C. Co. No. 3, 91 pages, 3-8-38.

Examiner Norwood: It is marked 926 for identification A to 4-M.

(The documents referred to were marked for identification "Commission's Exhibit 926-A to 4-M.")

Mr. Paust: The next is a file marked L. P. C. Co. No. 4, 92 pages, 3-8-38.

3858 Examiner Norwood: It will be marked 927 for identification A to 4-N.

(The documents referred to were marked for identification "Commission's Exhibit 927-A to 4-N.")

Mr. Paust: And next is a file marked L. P. C. Co. No. 6, 23 pages, 3-8-38.

Examiner Norwood: It will be 928 for identification A to W.

(The documents referred to were marked for identification "Commission's Exhibit 928-A to W.")

Mr. Paust: Next is a file marked L. P. C. Co. No. 7, 98 pages, 3-8-38.

Examiner Norwood: It will be 929-A to 4-T.

(The documents referred to were marked for identification "Commission's Exhibit 929-A to 4-T.")

Mr. Paust: And next is a file marked L. P. C. Co. No. 2, 284 pages, 3-8-38.

Examiner Norwood: 930 for identification, A to 11-X.

(The documents referred to were marked for identification "Commission's Exhibit 930-A to 11-X.")

Mr. Paust: The next is a file marked L. P. C. Co. No. 12, 3-8-38, 48 pages.

Examiner Norwood: It is 931 for identification, A to EE.

3859 (The documents referred to were marked for identification "Commission's Exhibit 931-A to EE.")

Mr. Paust: The next is a file marked L. P. C. Co. No. 11, 3-8-38, consisting of 101 pages.

Examiner Norwood: It will be 932-A to 4-W.

(The documents referred to were marked for identification "Commission's Exhibit 932-A to 4-W.")

Examiner Norwood: This is off the record.

(Discussion off the record.)

Mr. Paust: Next is a file marked L. P. C. Co. No. 9, 3-8-38, 194 pages.

Examiner Norwood: 933 for identification, A to 8-L.

(The documents referred to were marked for identification "Commission's Exhibit 933-A to 8-L.")

Mr. Paust: Next is a file marked L. P. C. Co. No. 10, 3-8-38, consisting of 13 pages.

Examiner Norwood: It will be 934-A to M.

(The documents referred to were marked for identification "Commission's Exhibit 934-A to M.")

Mr. Paust: Included in those papers should have been a file marked No. 5, consisting of 4 pages. Probably it was tacked on or inserted in one of the other files.

Examiner Norwood: Had we not better look that 3860 over now?

Mr. Paust: Yes.

Examiner Norwood: Can you give a description of those? You may just leave that statement in the record.

Mr. Paust: It was a file marked No. 5, consisting of four pages.

Examination Norwood: You may look at them now and see if you can find it.

Mr. Paust: I see it has already been marked 927-1-A to 4-N.

(Discussion off the record.)

Mr. Paust: File No. 5 was submitted with File No. 4 and was marked 927-A to 4-N, along with File No. 4.

Examiner Norwood: I know, but does not that change the number of sheets?

(Discussion off the record.)

Mr. Paust: Those are extra sheets which I will now offer as File No. 5.

Examiner Norwood: Make your correction mark there and mark the file as furnished by the counsel as stated there 927-A to 4-N.

How he will offer the other file.

"Mr. Paust: I proffer a file marked L. P. C. Co. 3861 No. 5, 4 pages, marked 3-1-38.

Examiner Norwood: That will be 935 for identification, A to D."

(Each document thus produced was marked for identification as indicated by the directions of "Examiner Norwood.")

3862 Mr. Wooden: May I inquire whether those papers proffered this morning, together with those previously

proffered, constitute complete compliance with the subpoena?

Mr. Paust: We believe that those papers constitute all of the papers that we have which come within the subpoena. However, about six o'clock last night, before I left New York, I was advised by our client that in a recheck of some district office files, that had been overlooked, and those had been shipped to our home office and are now going through. If any papers are found in those files they will be immediately shipped to me and I will proffer them.

Examiner Norwood: Are there any further proffers now?

"Mr. Hershberger: From the files of Mr. Blaine S. Smith, who is now the president of the Universal Atlas Cement Company have been found some papers which are not parts of the files of the Universal Atlas Cement Company; they are Mr. Smith's personal files. They are files which he brought with him when he came to the Universal Atlas Cement Company from the Pennsylvania-Dixie Cement Corporation, due to his having acted as the chairman of the Marketing and Research Committee that had to do with Professors Burns and Clark, also some papers which
3863 he had in a personal file due to his acting as chairman of the T. V. A. Committee. Those files I am proffering not as files of the Universal Atlas Cement Company, but as files from Mr. Smith's personal files.

The first is 45 pages which have to do with Burns and Clark.

Mr. MacIntyre: Mr. Hershberger, may I inquire if these are not being submitted in response to the subpoena which was served upon Mr. Smith?

Mr. Hershberger: Yes, in response to the subpoena served upon Mr. Smith, but I want to make it clear that these were not from the Universal Atlas files. These were from a personal file which he kept and which the Universal did not have in its possession. The first is 45 sheets.

Examiner Norwood: They will be marked 936-A to SS for identification.

Mr. Hershberger: The second is 68 sheets relating to T. V. A. from Mr. Smith's personal files.

Examiner Norwood: They will be marked 937-A to 3-P for identification.

3864 Mr. Hershberger: The third is 39 pages also referring to T. V. A. matters, I believe.

Examiner Norwood: They will be marked 938-A to MM for identification."

(Each document thus produced was marked for identification as indicated by the directions of "Examiner Norwood.")

Mr. Hershberger: Those are tendered to your Honor subject to the same conditions and with the same objections and exceptions as the papers previously filed.

Examiner Norwood: Yes.

Mr. Hershberger: I have some further files from the Universal Atlas Cement Company which I have not had an opportunity to look over. I will present them tomorrow morning.

Examiner Norwood: Now, Mr. Leisure, I suppose you have some?

"Mr. Leisure: Yes, sir. I have a file here from the Lone Star Corporation consisting of five sheets which I would like to proffer now.

Examiner Norwood: Marked 939-A to E for identification.

Mr. Leisure: The other day I offered a number
3865 of papers from subsidiaries of the Ideal which were not subpoenaed. I have here another subsidiary. It is the Colorado Company and it is a subsidiary of Ideal. That file consists of 104 sheets.

Examiner Norwood: They will be marked 940-A to 4-Z for identification.

Mr. Leisure: The next file is that of the Giant Corporation, 28 sheets.

Examiner Norwood: 941-A to BB for identification.

Mr. Leisure: The next is the Alpha Portland Cement Company, three sheets.

Examiner Norwood: They will be marked 942-A to C for identification.

Mr. Leisure: The next is the Medusa, four sheets.

Examiner Norwood: They will be marked 943-A to D for identification.

Mr. Leisure: Here is another subsidiary of Ideal.
3866 We have already offered some papers under it before. It is the Three Forks Corporation, a subsidiary of Ideal, and it is eight sheets.

Examiner Norwood: They will be marked 944-A to H for identification.

Mr. Leisure: The next I proffer is that from the Ash Grove, three sheets.

Examiner Norwood: They will be marked 945-A to C for identification.

3867 Mr. Leisure: The next is Kosmos, 2 sheets.

Examiner Norwood: It will be marked 946-A and B for identification.

Mr. Leisure: The next is a subsidiary of Ideal, 48 sheets.

Examiner Norwood: That will be marked 947-A to 19-L for identification.

Mr. Leisure: The next is from the Ideal Company itself, not a subsidiary, 246 sheets.

Examiner Norwood: That will be marked 948-A to 10-L for identification.

Mr. Leisure: The next is from the Medusa, 45 sheets.

Examiner Norwood: That will be marked 949-A to 88 for identification.

Mr. Leisure: The next is the Nazareth, 54 sheets.

Examiner Norwood: That will be marked 950-A to BBB for identification.

3868 Mr. Leisure: The next is another subsidiary of Ideal, the Oklahoma, 97 sheets.

Examiner Norwood: That will be marked 951-A to 4-S for identification.

Mr. Leisure: The next is another subsidiary of Ideal, three forms, 29 sheets.

Examiner Norwood: That will be marked 952-A to CC for identification."

(Each document thus produced was marked for identification as indicated by the directions of "Examiner Norwood.")

Mr. Leisure: I believe the entire package comes from the Institute. It is papers of those companies in the Institute. The next is the Universal Atlas Company, 87 sheets.

Examiner Norwood: That will be marked 953-A to 4-I for identification.

Mr. Leisure: The next is the Union Portland Cement Company. It comes under the Ideal group, 95 sheets.

3869 Examiner Norwood: That will be marked 954-A to 4-Q for identification.

Mr. Leisure: The next is the West Penn, 39 sheets.

Examiner Norwood: That wil be marked 955-A to MM for identification.

(Discussion off the record.)

Mr. Leisure: Next is from the Alpha Company, 498 sheets.

Examiner Norwood: That will be Commission's Exhibit 956 for identification, A to 20-D.

Mr. Leisure: I might say that that file contains Burns and Clark material.

Next is Ash Grove, 29 sheets.

Examiner Norwood: 957 for identification, A to CC.

Mr. Leisure: And the next is Giant, 159 sheets.

3870 Examiner Norwood: That will be 958 for identification, A to 6-I.

Mr. Leisure: Next is Hermitage, 22 sheets.

That is all Burns and Clark material, Mr. Wooden.

Examiner Norwood: 959-A to V, for identification.

Mr. Leisure: Next is the subsidiary of Ideal, Colorado, with 101 sheets, Burns and Clark material.

Examiner Norwood: 960 A to 4-W.

Mr. Leisure: The next is the subsidiary of Ideal, Three Forks, 44 sheets of Clark and Burns material.

Examiner Norwood: 961-A to RR.

Mr. Leisure: Next is Kosmos, 43 sheets, Burns and Clark material.

Examiner Norwood: That will be 962 for identification A to QQ.

3871 Mr. Leisure: Next is Lone Star, Burns and Clark material, 293 sheets.

Examiner Norwood: It will be 963 for identification, A to 12-G.

Mr. Leisure: Next is Medusa, 9 sheets of Burns and Clark material.

Examiner Norwood: 964 for identification, A to I.

Mr. Leisure: Next is North American, 76 sheets, Burns and Clark.

Examiner Norwood: It will be 965-A to XXX, for identification.

Mr. Leisure: Next is Nazareth, 32 sheets of Burns and Clark material.

Examiner Norwood: It will be 966-A to FF for identification.

Mr. Leisure: The next is papers from the Cement Institute, covering the Burns and Clark material.

3872 Examiner Norwood: Yes.

Mr. Leisure: Also under the subpoenas and under the order of the Federal Trade Commission.

(All of the documents thus produced were marked for identification as Commission's Exhibits in accordance with directions of Trial Examiner Norwood.)

I may say as to these questionnaires, Your Honor, or the answers to the questionnaires, rather, instead of turning over copies, or waiting for them to come in from

the companies, we are turning in the originals, and I do not want to ask the Government to go to the expense of photostating these and giving them back, but since we are using them, and they are part of our case, if you could look over those first and return to us the ones you do not want it will be of assistance to us, because these are the originals which have been sent in, and are the complete record I believe on the subject. They are our own files.

Examiner Norwood: As I understand, they are to return to you everything that is not received in evidence.

Mr. Wooden: It is difficult to say, Mr. Leisure, just how they will be used, and when.

Of course, we want to accommodate you in every way possible, and under the Examiner's ruling regarding these matters I believe you have access to them at any time at any rate.

Mr. Leisure: The point is when we turn these over.

3873 Mr. Wooden, we have no office copy.

Mr. Wooden: I understand.

Mr. Leisure: These are the ones that were sent in to us which we have always regarded as papers in the preparation of this case, and we are using them and we need them, and we would like to have them.

3874 Examiner Norwood: Everything that is not introduced in evidence will be returned to you. Those that are introduced in evidence we can give you a photostat copy.

Mr. Wooden: And we can go ahead and give precedence in the examination as to those you want over some of the others.

Mr. Leisure: I wish you would.

Mr. Zimmerman: Just one question there. I would like to know what Mr. Wooden means by his statement that it is difficult to state how and when they will be used. I am not so much interested in the when, but am very much interested in the how.

Examiner Norwood: I do not think we need to go into that now.

Let us go ahead and get these exhibits in now.

Mr. Zimmerman: I thought we ought to know for the reason as I understand there is only one way they are intended to be used, and that is to offer them in the record or not.

Examiner Norwood: I think it is all very plain.

Mr. Wooden: No, they might be used as a basis for questioning and they might be used for tabulations.

Mr. Zimmerman: It would not be intended to use them in any other way in connection with this particular
3875 case, would it?

Mr. Wooden: No.

Examiner Norwood: Oh, no.

How many are there, Mr. Leisure?

Mr. Leisure: There are the first five which I have here, and I will offer them in groups, your Honor, as we have marked them and numbered them. I do not know how to designate this as to numbers.

Folder No. 7 has 457 sheets of Clark and Burns material.

Mr. Wooden: All questionnaires?

Mr. Leisure: Yes.

Examiner Norwood: That is 967-A to 18-O's, for identification.

Mr. Leisure: Folder No. 8 has 429 sheets.

Examiner Norwood: 968 for identification, A to 17-M's.

Mr. Leisure: Folder 9 has 437 sheets.

Examiner Norwood: That will be 969 for identification, A to 17-U's.

3876 Mr. Leisure: Folder 10 has 396 sheets.

Examiner Norwood: 970 for identification, A to 16-F's.

Mr. Leisure: And I have another folder here marked Folder No. 4, consisting of 846 sheets, which seems to be a different type of material.

It consists of letters, I believe, and it is also Clark and Burns material from the Cement Institute.

Examiner Norwood: It wil be marked Exhibit 971-A to 33-I's for identification.

3877 Mr. Leisure: The next is a folder marked "2".

Examiner Norwood: Is that from the Cement Institute?

Mr. Leisure: Yes, it is Burns and Clark material, answers to questionnaires, and instead of being marked "Sheets" is is marked 89 "pieces".

Examiner Norwood: They will be marked 972-A to 4-K, for identification.

Mr. Leisure: Folder No. 3 has 85 sheets.

Examiner Norwood: They will be marked 973-A to 4-N, for identification.

Mr. Leisure: Folder No. 4 has 372 sheets.

Examiner Norwood: They will be marked 974-A to 15-R, for identification.

Mr. Leisure: Folder No. 5 has 493 sheets.

Examiner Norwood: They will be marked 975-A to 20-L, for identification.

3878 Mr. Leisure: Folder No. 6 has 376 sheets.

Examiner Norwood: It will be marked Commission's Exhibition 976-A to 15-L for identfication."

(Each document thus produced was marked for identification as indicated by the directions of "Examiner Norwood".)

Mr. Leisure: All of the papers that I have tendered this morning, Your Honor, are proffered subject to all of the objections that have been made on the offer of these papers, and I assume we may have the same exception.

Examiner Norwood: The same arrangements, objections and exceptions.

Mr. Wooden: Might I ask at this time, Mr. Leisure, just where we stand with reference to whether or not all parties on whom subpoenas were served have made now complete compliance and turned in all of the papers which they had to offer?

Mr. Leisure: As far as I know, we have tried to comply with the subpoenas. If any subsequent rechecks develop any other papers, Mr. Wooden, they will be sent to me. That is the word that I have gotten from most of the companies. I do not believe they have regular staffs of men doing that work at the moment, but as far as I know they have attempted to comply and get the papers here in accordance with the subpoenas.

3879 Mr. Wooden: And the papers already produced are now tendered as being in full compliance except for possible recheck or something of that sort?

Mr. Leisure: As far as I know they are, Mr. Wooden. They have tried to comply with the subpoena; that is about all I can say.

Examiner Norwood: We will take a ten-minute recess.

(Whereupon a short recess was taken, after which the hearing was resumed as follows:)

Examiner Norwood: Now, this is for the record: After the hearing on the 24th of February, 1938, the Commission offered papers identified as 638-A to BB, and this Examiner reserved the ruling, and has examined these docu-

ments, together with the written objections of counsel for the respondents. Are those objections in the record? Did they go in the record?

(No response.)

Examiner Norwood: The objection is overruled, and they are received as marked.

(COM. EX. 638-A to BB was offered and received in evidence.)

3880 Mr. Wooden: Yes, your Honor. Before recalling Mr. Reiter, I wish to refer to Exhibit 717-A and B, which were identified by Mr. MacIntyre. And the question of their further identification and admission was left with Mr. Leisure to see if he could check the identity based on the initials of Mr. H. B. Robeson, which appear in 717-A.

Mr. Leisure: I have checked those, and those are his initials, and we withdraw our objection to the exhibit.

Mr. Wooden: I therefore take it that 717 A and B may be received at this time?

Examiner Norwood: When were they offered, do you remember?

Mr. Wooden: I cannot give you the date.

Mr. MacIntyre: They were offered on February 11, 1938.

Examiner Norwood: 717-A and B for identification are received in evidence as marked.

(COM. EX. 717-A and B was offered and received in evidence.)

Mr. Zimmerman: If you could supply the page number of the transcript it would perhaps be of assistance.

Mr. MacIntyre: The page involved is 3348.

Mr. Wooden: Your Honor, Mr. Robeson is here,
3881 and for the sake of further clarification of this exhibit, I think we ought to ask him a few questions about it, if he will take the stand.

Examiner Norwood: All right.

H. B. ROBESON, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

I am vice-president of the Nazareth Cement Company, Nazareth, Pennsylvania. I have held that position since about 1932 and have had charge of the sales of the company throughout that period.

Q. With reference to Exhibit 717-A and B, those are your initials on the first page, are they (indicating)?

A. Yes, sir.

Q. And in your handwriting?

A. Yes, sir.

3882 Q. I understand that those papers were in the files of the Nazareth Company and the copy was obtained by Mr. MacIntyre from those files?

A. That is correct.

Q. How did you come to put your initials on that paper?

A. Well, just in a manner of the usual routine, as most things that would come to my desk would be initialed by me, just a matter of ordinary detail and handling.

Q. They would come to your desk, and where?

A. It is customary for a matter to come to my desk in any manner in regular routine by delivering to me by any member in the company, or come in by mail.

Q. I notice the language in the first paragraph in the first person as "being the methods we should employ." In figuring government destination costs do those methods employed or described in that paper represent the methods employed by the Nazareth Company in figuring government destination costs at that time?

3883 A. Well, as a matter of information, my first recollection of this paper is that Mr. MacIntyre was in my office at the Nazareth and extracted it from the files. I have no recollection of the origin of it. I rather imagine that it came to me in more or less of an academic way, for the simple reason that we are not involved in land grant territory at all. In all of the territory that we operate in, we have never had a land grant rate, and consequently any interest we might have in it would be more or less academic.

Q. Can you say whether or not it was prepared by someone in the employ of the Nazareth Company?

A. I could not say exactly, sir. Since the day Mr. MacIntyre extracted it,—Mr. MacIntyre of course let me look at it the day that he extracted it, and I looked over it at that time—and again there would not be anybody in the company that would have occasion to write on land grant rates except possibly Mr. Coffin who was my immediate superior and at that time was connected with the Cement Institute. Now, it is entirely possible that he may have, in order to follow some trend—Mr. Coffin was an attorney and he had that type of mind, and frequently when he had ideas,

he would kind of reduce them that way to see whether he had the grasp of the thing. That is the only possible explanation I can give you for it.

3884 Q. Did you sometimes receive unsigned communications from sources outside the company?

A. No, sir, not to my recollection.

(COM. EX. 717-A and B was offered and received in evidence.)

By Mr. Wooden:

Q. Was Mr. Coffin president of the Institute during 1934?

A. I would not want to say from memory, sir. He was chairman of the committee and kind of whipping it together at the time of the N. R. A., then he was a member of the Code Authority. I don't remember the exact term of office when he first took office; I do remember about when he dropped it.

Q. When was that?

A. It would be possible that he may have been president at that time.

Q. When did he drop out?

A. I remember, as I remember he dropped out about the fall of 1936, I would say, in other words his health was beginning to go bad on him.

3885 GEORGE H. REITER was thereupon recalled as a witness for the Commission and, having been previously duly sworn, testified further as follows:

Direct Examination by Mr. Wooden (Resumed)

Q. Mr. Reiter, when you were on the stand the last day, you made some statement to the effect that in the case of a standardized commodity like cement, the prices sooner or later tended to become identical?

A. Yes, sir.

Q. Is it your testimony that the quality of so-called standard cement produced by different companies is identical?

3886 A. No, Mr. Wooden, I do not claim that it is identical, but I claim that it all safely meets standards specifications, and the customer is only interested in prod-

ucts which meet specifications under which he works, as a rule.

Q. Some of them will more than meet it and in different degrees more than meet it than others?

A. That is correct.

Q. So then the specifications are a minimum standard that must be met rather than an exact standard?

A. That is right.

Mr. Wooden: I ask to have this paper marked for identification.

(The document referred to marked for identification "Commission's Exhibit 917.")

By Mr. Wooden:

Q. So far as you know, Mr. Reiter, have the companies which have better quality of cement than the minimum specifications require made a point of obtaining business by advertising that fact?

A. I know of no advertising that they have directed particularly to that fact, but they have made a sales point of it in some instances which I remember.

Q. At the same time, it is quite widely publicized that the quality is the same?

A. In exactly the way that I stated that it is the 3887 same in that it meets a standard specification.

Q. Hasn't there been a good deal of publicity given to the claim that the quality of standard cement is practically identical?

A. I think so.

Q. Notwithstanding the fact that there are some substantial differences in the quality above the minimum specifications?

A. Mr. Wooden, I would call those minor differences, mostly conversation.

Q. Calling your attention to Exhibit 178-C, abstract of bids on the Tygart River Dam, will you examine the specifications of each bidder and see if there are not substantial differences in the time setting and other qualities, ingredients and other elements of quality?

A. I note differences in both chemical characteristics and in compressive strength according to this tabulation. I am totally unqualified to interpret what differences these chemical variations amount to.

Q. As to compress strength, isn't that an important element in determining quality?

A. It is an important element in determining quality, but the contractor, the purchaser of this cement if the purchaser in this case was a contractor—

Q. (Interrupting) This was a Government purchase.

Mr. Leisure: Go ahead and finish your answer, 3888 please.

The Witness: But if the purchaser was a contractor, he is not concerned beyond the requirements of his specifications.

By Mr. Wooden:

Q. Can not the contractor even find an advantage in having a quick-setting cement in the time that it takes him to complete his contract?

A. With the variation in setting so far as I see indicated here, there would be no particular advantage.

Q. Do not some of the cements reach their maximum strength after 28 days, and others reach it more quickly than that?

A. There is rather common in this industry a special cement known as a high early strength Portland cement which is sold at a premium price because it does reach a strength in three days, against the standard Portland cement in 28 days. Where you have that variation in the strength of concrete, it is a decided advantage, but much less variation than that, Mr. Wooden, in my opinion, becomes merely a preference of the user.

Q. Were not there considerable differences in that tabulation there of the compressive strength at given periods of time?

3889 The Witness: There are what I would call considerable differences under the three-day tests covering compressive strengths.

There is a much less difference in the compressive strength given for the 28-day test.

Now, I think it would be interesting to note that under Bidder No. 7 and opposite compressive strengths it 3890 says "Guaranteed to exceed the standard requirements for Portland cement." In other words, it appears to me that these compressive strengths were merely the guarantee of the bidder, who might be very optimistic or very pessimistic, and therefore to me mean nothing.

Q. Mr. Reiter, I show you a paper marked 977 for identification. Will you identify it as an authentic circular of the Code Authority? (Handing document to witness.)

A. (After examining paper) Yes, sir.

Mr. Wooden: I offer it in evidence.

Examiner Norwood: Any objections?

Mr. Leisure: I have no objection.

Mr. Zimmerman: I have only this objection, that
3891 it is encumbering the record with matter that is not material at all to the issues, or even relevant to the issues.

(COM. EX. 977 was offered and received in evidence.)

Q. Were the requirements of the Code that were quoted in that paper the specifications for so-called standard cement?

A. Those three specifications referred to are recognized as standard in the industry.

Q. I now show you papers marked for identification 978-A to G, inclusive. Will you accept them as authentic photographic reproductions of correspondence from the files of the Code Authority? (Handing documents to witness.)

A. (After examining documents) Yes, sir, Mr. Wooden.

Mr. Wooden: I offer them for the record.

Examiner Norwood: Any objection?

Mr. Leisure: No objection.

Examiner Norwood: How many sheets are there?

Mr. Wooden: "G" was the last one. "A" to "G."

Examiner Norwood: 978-A to G, is it?

Mr. Wooden: Yes.

(COM. EX. 978-A to G was offered and received in
3892 evidence?

Q. I notice here from 978-A, a letter of the Standard Portland Cement Company to the chairman of the Code Authority, it states it filed a price at $2.16 at a certain destination, and the Lehigh quoted $2.14, and the Standard wanted to know if it was wrong. How could you go about telling Standard whether or not it was wrong?

The Witness: Mr. Wooden, I do not see any answer to that letter there.

By Mr. Wooden:

Q. No, I did not either. I want an answer to my question.

A. But I think it would be self-evident to this inquiry that they were wrong if they bid higher than the low-
3893 est filed price filed with the Code Authority, providing that they had notice of it.

Now, if they had inquired from us, we would have advised them of the lowest price filed. And then they were wrong, if they wanted the business and did not meet this lowest filed price, because they could not get any at a higher price.

Q. But what reason was there to believe that the higher price was any more wrong than the lower price?

A. Because it don't get the business.

Q. Even if it were of a better quality of cement?

A. Mr. Wooden, even with these variations in quality of standard cement, in my opinion you can't get one cent more a barrel for it, the variations being as slight as they are.

Mr. Leisure: It seems to me we should have an understanding whether or not counsel is withdrawing one of his allegations in his complaint at this time, because he has so alleged in his complaint.

Examiner Norwood: You may discuss that.

Mr. Wooden: So I do have an allegation but it is a matter of interpretation.

3894 By Mr. Wooden:

Q. I notice in Exhibit 978-F the Volunteer Company wanted to know whether a price which it was filing of $2.50 at Athens, Alabama, was correct or not. How could you answer a question like that, whether it was correct?

A. I am sure that we interpreted that letter when received to mean whether it was the lowest price filed, or equal to the lowest price filed, and on that basis I am sure we answered.

Q. That the price was correct?

A. No; we gave them information as to the lowest price filed, and if there was a variation in the price under in that case we probably gave them that information also.

Q. In that case, however, they filed the correct price and then wanted to know if it was correct, I believe?

A. I think I recollect that.

Q. I think the file shows that. On what basis are sales made between mills in the industry? I gather that occasionally one mill sells cement to another mill, is that correct?

A. Mr. Wooden, I am only qualified to answer that question by sales from one company to another, which were filed during the code period.

And such sales were made at a variety of prices, as compared to the lowest filed commercial price at that
3895 destination.

Q. Was there a recognized discount between mills from the ordinary commercial price?

A. Apparently not, because the sales filed with us were sometimes at the same price as the destination price, but I remember one at least as much as 15 cents a barrel below the commercial price.

Q. In selling to other mills did the selling mill sell f.o.b. to mill or on a delivered basis?

A. The only occasions that came to my notice they sold f.o.b. destination.

Q. Just as though they were selling to an ordinary commercial purchaser?

A. Yes, I would say so.

Q. During your sales manager connection with the Missouri Company, did you at times sell cement to other mills or buy from other mills?

A. I don't recollect that we did; I believe no.

Q. When sales were made to railroads, on what basis were they quoted?

Mr. Leisure: It seems to me that we should have the time specified. I don't know what he refers to, myself.

Mr. Wooden: I want that cleared too.

By Mr. Wooden:

3896 Q. Make it during the code period first, and then we will enlarge on that.

A. Answering for the code period, our filings indicated that the railroads were sold in two ways; one at the destination price filed for all commercial buyers, and the other one at a price f.o.b. the rails of the purchaser nearest to the plant quoting.

Q. That is in case the mill was located on the line of the purchasing road?

A. Well, whether they were or not, if they were located on the line, the sale would be f.o.b. their mill. If they were located off the line, the sale would be made f.o.b. the rails of the purchasing railroad company at the nearest junction in the mill quoting.

Q. And what difference or differences have there been in that matter since the code period?

A. Well, so far as my knowledge goes, which is limited

on that point, I believe that the same method of quoting railroads continued.

Q. How did it happen that sales are made f.o.b. mill to railroads on the line?

A. Because the railroad or let us say the railroads figure differently their cost of hauling company freight.

By "company freight," I mean that owned by the
3897 railroad, and in order to be competitive therefore, with a filed price in the code days, a company had to quote f.o.b. the nearest point their rails. Now, if the use of that cement happened to be near this mill or junction point on the purchasing company's rails, and the railroad company figured a cost of haul per mile which was appreciable, that company got the business. If it was the practice of the railroad, however, to haul their own freight free without any charge on their books, the mill or junction point nearest the point of use might not get the award at all.

Q. Was the result that each bidding mill was able to made the railroad the same price at a given place?

A. No, sir, that was not the result.

Q. You said "in order to be competitive". Is that what you meant?

A. Let me answer it like this, that as in other prices filed with the code authority, the prices for sale to railroads f.o.b. their own rails was generally the same, but they nevertheless might not be competitive at the destination where this cement was to be used.

Q. In so far as the prices were made to the railroads f.o.b. plant of the seller on the line of the purchasing railroad, was the basing point system applied at all?

A. I am not sure that I can answer that question. I can give you my impression that it was not used
3898 entirely, for this reason—

Q. (Interrupting). It was not used entirely for this reason, you say. What was not?

A. The so-called basing point system. Take for example the Pennsylvania Railroad with many miles of line. They might have and I think did have several cement mills which were so-called basing mills on their line. Only the lowest one of those basing prices would apply for sale to that railroad, therefore the other bases would necessarily be not considered.

Q. That is irrespective of where the cement was to be used?

A. Generally speaking that was true. I believe there were some filings under the code days of one price in the east to a railroad such as the Pennsylvania Railroad and another price in the West, but I am not entirely sure of that.

Q. How would a mill not located on the line of the purchasing railroad manage to equalize its price with the f.o.b. mill price of a mill that was located on the line of the purchasing road?

Mr. Leisure: Just a minute. I assume this is directed to the code period, and he is asking about sales that he observed.

Examiner Norwood. I think he can answer that.

The Witness: Let it be understood that I am an-
3899 swering for the code period.

By Mr. Wooden:

Q. Yes.

A. And I have tried to explain the points you now raise, before, Mr. Wooden, the point being that a mill located off of the line of the purchasing railroad would have to deliver its cement to the nearest junction point on the purchasing railroad at its own cost, and at that junction point usually filed the same price as the lowest on file for sale by any one to that particular railroad.

Q. At any point on the line?

Q. I take it from that, that the destination price at the junction point of a mill off the line of a purchasing road had then the equvalent of the mill price of the mill on the purchasing road's line?

A. If the mill price was lower.

Q. Yes.

A. But sometimes apparently the mill off of the line of the purchasing railroad plus its freight to the rails of the rails of the purchasing road made the price.

Q. You mean that then the mill on the purchas-
3900 ing road's line reduced its mill quotation to meet that junction point quotation?

A. That is right.

Q. Then under this arrangement the railroads got the benefit of the proximity of the mill's minimum when they were on their line?

Mr. Leisure: I think that is argumentative. The facts speak for themselves.

Examiner Norwood: I think he may explain that.
Mr. Zimmerman: Off the record a moment.
(Discussion off the record.)
Examiner Norwood: Repeat the question.
(The question is read.)
Examiner Norwood: Objection overruled. He may explain that to us.
The Witness: I presume they did.

By Mr. Wooden:

Q. How long before the code, or was it not true that long before the code, this same method of quoting to railroads was in existence?

A. So far as I know it prevailed before the N. R. A. Code.

Q. And since as well?

A. And since. Now, I would like to say that this method of selling railroads does not suit me and I am pretty sure that it does not suit many other cement companies, but it is the only way that I know of to sell a railroad without them entirely defeating you. Some railroads have a system that they will not buy off of they own rails, and whatever price was offered to those railroads by a mill off of their own lines they would not purchase. No plant off their line could be competitive.

Q. In other words, in this case the bargaining power of the buyers is so strong that the sellers had to yield to it and notwithstanding their dislike of it?

A. No. They have this thing that no one else has,—they have the possibility of hauling the freight free.

Q. That adds to their bargaining power, doesn't it?

A. I will agree that it materially adds to their bargaining power.

Q. Why is it that the mills do not even demand that the railroad company state where the cement is to be used, like they do in the cases of sale to private purchasers or even to the Federal Government?

A. That has been attempted a number of times, but a railroad will purchase a car of cement for maintenance, and it might be used scattered over 100 miles of track.

Q. Sometimes that might be true of a government purchase or a contractor's purchase, might it not, or a dealer's purchase?

A. I doubt it.

3902 Q. Not an individual car, but I mean portions of an individual purchase might be used at different places?

A. You mentioned the dealer. I think that would be impossible for a dealer. Who else did you mention?

Q. Government purchases and contractors.

A. Well, a State purchase, for example, for highway maintenance would fall within that category and delivery will be made to them at any place they name, but they do not have the free or very low freight, and there is no inducement for them to take it from the railroad car to a number of points on the rails.

Q. If they could get the mill price, they might find it advantageous to do that, might they not?

A. No, I don't see how that affects it, Mr. Wooden.

Q. The industry does not even quote a price to States, for instance, for highway construction without knowing just where the deliveries are to be made so that the delivered price may be quoted at those points, is that true?

A. I believe that is generally true.

Mr. Leisure: There are two questions in that last question, and I am not quite clear which one the witness answered. The first was as to delivery, and the second was "So that they could quote a delivered price". I think the witness probably answered the first part of the question without listening to the second, and there are distinctly two questions.

3903 Examiner Norwood: You can bring that out on cross examination.

By Mr. Wooden:

Q. You can explain your answer, if you like?

A. Well, if I may hear the question and answer.

Examiner Norwood: I think he answered the question, and I think that settles that. If the counsel wants to distinguish in the cross examination, he may do so.

Mr. Wooden: I gave the witness opportunity to amplify his answer and explain it if he wanted to. I assume he wants the question reread so that he might answer it.

Examiner Norwood: I think you will have to ask him another question.

Mr. Wooden: I do not care to ask anything further about it.

By Mr. Wooden:

Q. I am showing you papers marked 979-A to D, for identification. Will you identify them as authentic circulars issued by the Code Authority with reference to the quotation of prices to railroads? (Handing documents to witness.)

A. (After examining documents.) Yes, sir.

Mr. Wooden: I offer them for the record.

Examiner Norwood: Any objection?

Mr. Leisure: No objection.

3904 (COM. EX. 979-A to D was offered and received in evidence.),

3906 Q. Mr. Reiter, according to Exhibit 979-B a mill was advised that it could make different prices at its mill to three different railroads that served that mill under certain conditions. Will you state the situation under which it would be not only possible but on the ruling of the Code Authority permissible to quote different prices to three railroads at the same mill?

A. If it itself had not filed a price f. o. b. its mill for sale to any one of these three railroads, but had met the filing of others f. o. b. mill that could be one situation.

Q. Would that involve the mill not being a basing point mill?

A. Well, that might or might not follow. Even if it was no basing point mill it could file a price f. o. b. at the mill for sale to railroads, or some particular railroad. So I do not think that enters into this matter, Mr. Wooden.

Q. Some reference was made in that exhibit to the mill not being a base mill, was there not, in the upper part, in the front quotation of the "B," on the second page of the upper part? (Indicating.)

A. Yes. In other words, the inquiry to the Code Authority from this member of the industry says in part,

"Under our plan of quoting railroads suppose a mill
3907 is located on three different lines and has no mill base established."

Q. Now, were there other cases in which the same situation might occur?

A. There might—I imagine this kind of a case, Mr. Wooden, where a mill filed a price for sale to one railroad itself, and met a price filed by some one else to another railroad also serving that mill. Then that first company

would meet the second filing, and therefore have two different prices for sale to the two railroads serving its mill.

Q. Both of its prices however would be mill prices?

A. Well, they would be f. o. b. its mill, yes, sir.

Q. I notice from the exhibits you have there that a different ruling was applied to sales to subsidiaries of railroads; in other words, the subsidiaries of railroads bought just like any other purchaser as a destination price rather than f. o. b. mill.?

A. Yes. It was the opinion of the Code Authority that a mine, for example, entirely owned by a railroad, should be as prescribed by the Code for mines.

Q. Even though the hauling were done by the railroad that owned it?

A. Yes. I am not sure that the railroad does provide a free haul for subsidiaries but maybe they do.

Q. I didn't say anything about a free haul, but even though the road that owned the subsidiary did the hauling.

A. Yes.

3908 Q. Did you find any difficulties in the railroads insisting that their subsidiaries buy f. o. b. mill just like the railroads themselves did?

A. The Code Authority would hardly have any knowledge of that. They would complain to the cement companies if they had any complaint.

Q. So far as your general experience and knowledge in the industry goes, what has been the attitude of the railroads towards purchases of cement by their subsidiaries?

A. I had no knowledge of complaints on the part of the railroads on behalf of their subsidiaries.

Q. Or whether or not they have insisted that their subsidiaries buy f. o. b. mill?

A. I have no knowledge of that, Mr. Wooden.

Q. Have you dealt with subsidiaries of railroads in your capacity as sales manager for companies?

A. If the matter was of importance, it would have reached my attention, and I do not recollect of any such case where it reached my attention.

Q. Showing your the papers marked Exhibit 980-A and B for identification, will you identify them as authentic photographic reproductions of correspondence from the files of the Code Authority?

A. Yes.

Mr. Wooden: I offer them for the record.

3909 Examiner Norwood: Any objection?

Mr. Zimmerman: Only the objection that being within a period back in 1934 under the Code, it does not have the slightest bearing upon the charges contained in the complaint.

(COM. EX. 980-A and B was offered and received in evidence.)

Q. Was the Glens Falls Cement Company that figured in this correspondence, was it located on the line of the Delaware & Hudson Railroad?

A. I don't know, Mr. Wooden.

Q. Is that a case where one mill wanted to know what prices to the Delaware & Hudson had been filed by another mill and the information was conveyed to them?

A. This is a case where, as you say, one member of the industry asked us what price for sale to this Delaware & Hudson Railroad had been filed by the Glens Falls Portland Cement Company.

Q. The Glens Falls is the one that wanted to know, is that right?

A. No. Another member of the industry had asked us, the Code Authority, for the prices which Glens

3910 Falls had filed for sale to the Delaware & Hudson Railroad; and we inquired, and this original inquiry to us in our opinion was preliminary to filing a complaint, under the Code, if this company, the Glens Falls Company, was selling that railroad at the prices on file with it. Then, on the basis of their reply which shows they were selling to this railroad at destination prices presumably already on file, we tell them that that is satisfactory, in other words, no violation of the code as indicaed, and in response—

Q. (Interposing.) Even though they had not filed the same price?

A. These are commercial destination prices which they had on file at which they say they were selling this particular railroad. Then in response to their inquiry in turn which asks us what the North American Company filed for sales to this railroad, we no not give them that information, but we tell them all the prices which were filed specifically for sale to the Delaware & Hudson Railroad.

Q. And send a copy to the North American?

A. Yes, we did.

Q. I am showing you now, Mr. Reiter, a paper marked

981 for identification, which purports to be a copy of a letter addressed to the Cement Institute from the Hermitage Company, June 27, 1935. Do you recall the letter and are you able to identify it as a copy of one that
3911 you saw? For your information it came from the files of Mr. Neylan.

A. I have no recollection of the letter, but I think I sense the situation as I read it in the letter there.

3912 Q. Do you remember anything about the circumstances that are referred to here?

A. I don't remember the letter at all, but I think I know what he is talking about from reading the letter there.

3914 (Discussion off the record.)

Examiner Norwood: Back to the record. The exhibit which is offered there is 981?

Mr. Wooden: 981.

Examiner Norwood: And there is no objection as to the identification, is there?

Mr. Wooden: I understand that is waived subject to check.

Examiner Norwood: Yes. It is received as marked, Commission's Exhibit 981.

(COM. EX. 981 was offered and received in evidence.)

3915 Q. Now, as I understand this communication, Mr. Reiter, the Hermitage Company was selling or quoting a price of $2.15 to one railroad at Nashville, $2.25 to another, and is was raising a question about quoting $2.63 to still another; is that right?

3916 The Witness: In answer to the question, this member of the industry says that he is selling to these three different railroads at the three prices you named, and I think they are all f. o. b. Nashville.

By Mr. Wooden:

Q. Was that still another case, can you say, or a case distinct from the one that was described in 979-B?

A. This will has no so-called base point.

Q. Yes.

3917 A. The point of this letter, Mr. Wooden, is in this first paragraph where he is quoting the same price to the Tennessee Central Railroad at two different destinations. On their railroad rate he is meeting the price filed by another for sale to that railroad.

Now, in accordance with the former ruling of the Code Authority, he should quote that price at his nearest junction point with that railroad. Here he is quoting it at two different junction points; and that is the point of this letter.

Q. Do you know how that matter was finally settled?

A. No. I can imagine—

Mr. Zimmerman: (Interposing.) Now, I object to the witness indulging in any more imagination. He has been at it too long already.

Examiner Norwood: Can you tell how those situations are usually settled, or have you settled any similar situations like that?

The Witness: I recollect one.

Examiner Norwood: The objection is sustained.

By Mr. Wooden:

Q. Will you accept a paper marked 982 as an authentic reproduction of a circular of the Code Authority? (Handing document to the witness.)

A. (After examining document.) Yes, sir.

3918 Mr. Wooden: I offer it for the record.

Examiner Norwood: It is received as marked. That is just one sheet, 982 is, is it not?

(COM. EX. 982 was offered and received in evidence.)

Q. I spoke to you this morning, Mr. Reiter, about sales between mills as to whether they were on a destination basis or an f. o. b. mill basis. Was not this case one where the price specified was a net mill price of $1.30?

3919 A. No, sir. It provides for sale by one member of the industry to another at regular destination price of the seller at these two named destinations and apparently others not named, less a manufacturer's discount of 15 cents a barrel, and it says they won't take the business if it nets them less than $1.30 in any case.

Q. Do you mean it was a quotation rather than a sale?

A. No, it was a sale, but while they have named two destinations—

Q. (Interrupting): There is no destination price named, is there?

A. It says "The foregoing quantity of cement was sold to a member company subject to the regular terms and conditions of our commercial business." In other words, their regular commercial price.

Examiner Norwood: What do you mean by the destination point of the seller?

The Witness: It is named here.

Examiner Norwood: The destination point named by the seller?

The Witness: In this filing it says "Please file the following terms and conditions of sale covering shipment of two cars of cement to Standard Lime & Stone Company" —who are manufacturers—"Baltimore, Maryland.
3920 132 barrels shipped to Hopewell, Virginia, 150 barrels shipped to Fredericksburg, Virginia." And now the clause follows which says: "The foregoing quantity of cement was sold to a member company subject to the regular terms and conditions of our commercial business." I interpret this to mean at their own filed destination prices.

By Mr. Wooden:

Q. So they did not get less than $1.30 net at the mill?

A. Yes, sir. Then this further indicates to me that they might continue that practice, but they would never take any business if they did not get at least $1.30 f. o. b. their mill net.

Q. What was the necessity of having a price filed in a case like this if they had already on file the destination price for those destinations?

A. The special price in this case was in the discount there which they named as a manufacturer's discount of 15 cents. Again, under the Code, all competitors had a right to meet their price, and therefore we advised them what it was when filed with us for sale to this other manufacturer.

Q. Is there any regular or generally recognized manufacturer's discount in a case of sale by one mill to another?

A. No, sir.

Q. Did the Code Authority interpret the price filed like that, subject to 15 cents off the regular destination
3921 price as calling for the meeting of that price by another mill on commercial business?

A. No, sir. It is described as a manufacturer's discount; in other words, for sale from one manufacturer to another.

Q. Under the Code, was it customary for the mills to file prices for delivery in outlying possessions of the United States?

A. Yes.

Q. What outlying possessions?

A. The Code, following an interpretation of the N. I. R. A., covered all possessions of the United States.

Q. Such as Hawaii?

A. Hawaii.

Q. And the Philippines?

A. Puerto Rico. We had no prices filed for the Philippines.

Q. Alaska?

A. Alaska.

Q. The Canal Zone?

A. Canal Zone.

Q. Were those filed as delivered prices to those various possessions?

A. The conditions varied. I would have to check them one by one. As I recollect it, we had no prices filed for Alaska, inasmuch as prices were filed f. o. b. docks or
3922 f. o. b. boats at ports in the United States for destination in Alaska. So far as the Canal Zone is concerned, as I recollect it, the prices were on file f. o. b. dock or f. a. s. specific ports in the Canal Zone.

Q. Delivered?

A. Delivered, yes, sir. And I believe the same was true for Puerto Rico, although I am not entirely clear on that.

Q. Of course, those various filings included the water transportation element as part of the delivered price?

A. Yes, sir.

Q. Did you have any method whereby the water transportation element was reported or compiled separately from the delivered price itself?

A. No. You mean such as filing transportation rates of vessels?

Q. Yes.

A. No, we had no such thing.

Q. Did you also have filed any water transportation rates on the Great Lakes?

A. No, sir.

Q. Did you have filed delivered prices based on water delivery over the Great Lakes?

A. Yes, sir.

Q. How was the transportation element arrived at in those various cases where water transportation was involved?

3923 A. Well, originally the company would file a price f. o. b. dock at destination, for example, and

other companies would meet it or set a new price as they might do in that connection.

Q. Did you find that water rates were less subject to ascertainment with accuracy than in the case of rail?

A. Well, I don't know that, Mr. Wooden. I had no occasion at the time to know anything about those Lake rates or other water rates.

Examiner Norwood: Were those not based on rail transportation?

The Witness: Your question is, was the price filed f. o. b. dock based on—

Examiner Norwood (interrupting): Rail transportation.

The Witness: Well, I would not be able to answer that either. I don't know.

By Mr. Wooden:

Q. Of course, that applies only to the domestic territory?

A. Yes, I am speaking of the domestic territory.

Q. Did you have prices filed for delivery in places like New York including lighterage costs?

A. Yes.

Q. Was there ever any compilation of transportation rates by water similar to your compilation of rail
3924 rates in the freight rate books?

A. No, sir.

3925 Q. Mr. Reiter, did you also have prices filed during the Code period for delivery by boat or barge on the rivers?

A. Yes, sir.

Q. Were all destinations covered by such filings?

A. No.

Q. What was the extent of destinations covered by filings with water transportation?

A. Such filings were on the inland waterways and were generally in connection with some construction project at that destination.

Q. Was that true for transportation on the Lakes as well as on the rivers, the Great Lakes?

A. No. I recollect some prices of that kind filed at destinations not served by railroads.

Q. In other words, water was the only method
3926 of transportation to such points?

A. Yes, sir.

Q. I am showing you papers marked 983-A to F, inclusive. Will you identify those as examples of the way price filing was handled for delivery by water, either both within the jurisdiction of the country and the outlying possessions?

The Witness: In answer to the question, Mr. Wooden, these are examples of specific filings, and in the case of the first letter to Mr. Gay of the Santa Cruz Company were at that time apparently all prices on file with
3927 the Code Authority for the Canal Zone and Puerto Rico.

By Mr. Wooden:

Q. Prior to the Code, had there been any effort made in the industry to disseminate information as to delivered prices in these outlying possessions, such as the Panama Canal Zone and Puerto Rico?

A. I believe I have lost your question. May I have it read?

The Witness: So far as I know, there was no dissemination of such price information.

By Mr. Wooden:

Q. Did the Trade Practice Committee continue that line of activity after the code period ended?

A. They attempted to continue open price filings, including filings for the possessions of the United States for a period, exactly as under the code period.

3928 (COM. EX. 983-A to F was offered and received in evidence.)

3929 Q. Can you give any reason why such information on delivered prices in the outlying possessions were not disseminated prior to the Code?

A. No, I can give no reason.

Q. Has there been any continuation of an exchange of price information on domestic business since the cessation of price filing through the Institute?

A. Not so far as I know.

Q. Has there been anything of that sort, so far as you know, through any district organizations?

A. Do you mean district organizations of the Cement Institute?

Q. District organizations of the Cement mills or cement companies.

A. Not so far as I know.

Q. Did the dissemination of information on delivered prices in the outlying possessions cease at the time the price filing itself ceased in the Institute?

A. It did, to the best of my knowledge.

Q. Showing you papers marked Exhibit 984-A to N, inclusive, will you identify them as authentic reproductions of communications from the files of the Code Authority?

3932 The Witness: I accept those as correspondence to and from the Code Authority.

3935 (COM. EX. 984-A to N was offered and received in evidence.)

Q. According to Exhibit 984-J and K, Mr. Reiter, the Pittsburgh Plate Glass Company, as I understand it, bid a certain price in error, and when it was accepted they went ahead and had the Green Bag Company fill the order, and paid the difference to the Green Bag Company; if I am not mistaken is that right?

A. That is right.

Q. Can you explain how the Green Bag Company was selected to be the filler of the order and the recipient of that difference in the price?

A. No, I can't.

Q. And according to Mr. Rader's letter, 984-K, there were other cases of this sort where companies had paid for their errors? Do you know of any other cases that were referred to?

A. I know there were other cases. That statement is correct, but I couldn't give you an additional incident at this time.

3936 It was a matter of this company attempting to show good faith in adhering to the Code and self-penalizing themselves for an error.

Q. Do you know on what basis in any of the other cases the selection was made as to which company would fill the order?

The Witness: I have no certain knowledge.

Examiner Norwood: He can explain his previous answer and qualify it.

The Witness: I have no certain knowledge, Mr. Wooden.

By Mr. Wooden:

Q. Are there certain recognized differentials regularly employed in the industry between the prices of cement,

depending on whether it is sold in bulk or in paper, or in cloth bags?

A. Yes.

Q. What are they?

A. Those vary, however, in different parts of the country. In the East and in the Middle West the price in paper is 25 cents per barrel less than the price in
3937 cloth, and the price in bulk is 45 cents a barrel less than the price per barrel in cloth.

Q. And in other sections, how is it?

A. During the code period it varied somewhat on the Pacific Coast. The cost for paper was higher in proportion to the net package price than in the East, and in some cases the cloth price was higher in relation to the net package price than in the East.

And in cases the bulk price was less in proportion to the net package price than in the East.

Q. Where do you draw the line between the East and West?

A. I would say the U. S. Bureau of Mines districts 10, 11, and 12 might properly be described as the western area.

Q. Is that what you had in mind in your answers to the previous questions?

A. That is right.

Q. And those differentials, according to the package used, changed from time to time?

A. Yes. There has been no recent change in the East and the Middle West.

Q. What is the last change you knew of?

A. I believe it was before 1930, when I got back in the cement business.

Q. Did you have some changes along that line made while you were with the Missouri Portland Cement Company?

3938 A. I think not.

Q. Do you recall any changes of those differentials, in those differentials, along in 1931 or 1932?

A. I don't recollect any change at that time, Mr. Wooden.

Q. How far back would you say that those differentials that you described were in existence?

A. To the best of my knowledge they have been in existence since January 1, 1930, when I came into the cement business.

Q. But beyond that?

A. I have no knowledge.

Q. You were out of it for a long while. I see. I misunderstood you.

A. Yes.

Q. Now, did you have price filings under the Code on the basis of so-called arbitraries to meet competition of foreign cement?

A. I can only answer that as I did the other day, that to my knowledge under the Code, there were a group of prices filed around the Port of New York, and I believe the Port of Boston, which were lower than those previously on file, substantially lower. And accompanying the price filings for the Port of New York to which I refer, there was a condition of warehouse delivery, and I presume that that was to meet a like condition offered by some competition, but I do not know.

3939 Q. Was that warehouse delivery to trucks?

A. Yes, sir.

Q. Do you know how it was determined just what area should be covered by the so-called arbitrary prices to meet foreign cement competition?

A. No, I do not, Mr. Wooden.

Q. As I understand it, these arbitraries in that seaboard territory were lower than the destination prices would have been calculated to the usual method?

A. At least they were lower than the destination prices previously filed in that area.

Q. Did you have any cases where dealers in the low priced territory would truck cement back into the higher priced areas?

A. I had no knowledge of that. There was no complaint filed with the Code Authority, and therefore I would have no occasion to know about it.

Q. Well, whether or not it came to your attention officially, did it come to your attention in any personal way?

A. No, it did not.

Q. The situation you refer to involved, did it not, shipping through the higher priced destinations to the seaboard areas where the lower prices were in effect?

A. I think that that was the case.

Q. Do you recall any instances where the N. R. A.

3940 took up with the Code Authority the question of dealers in the low priced zones along the seaboard trucking back into the higher priced areas farther inland?

A. I don't recall ever doing that.

Examiner Norwood: Did the Code or any of the regulations adopted by the Institute make any regulations about that trucking from the low priced territory into the high?

The Witness: There would be no enforceable provision or no provision of any kind by the Cement Institute. There may be a provision under the N. R. A. Code which would be against that in diversion, but I do not think it would be if the price f.o.b. truck was properly filed.

By Mr. Wooden:

Q. The dealers had some regulation on that subject, did they not?

A. Plenty.

Q. Well, they did not look with favor upon a dealer trucking outside of his own territory into another dealer's territory, did they?

A. Well, my answer to that is that dealers had a very complete code for their own use.

Q. Is that the code you are referring to when you said the N. R. A. Code a moment ago?

3941 A. No. I was talking about our own N. R. A. Code. We made no effort to observe the dealers' code.

Q. I am showing you papers marked Exhibit 985-A to N for identification, inclusive. They all relate, I believe, to the subject of filing prices for meeting foreign competition. Will you accept them as authentic reproductions of original papers?

The Witness: Yes, Mr. Wooden, these communications are concerning prices and conditions filed and stated to be filed on account of foreign competition.

Examiner Norwood: Filed where? With the Institute?

The Witness: Some of them were filed after May 27, 1935, and therefore with the Trade Practice Committee of the Institute.

3943 Mr. Leisure: May I ask the witness a question on this exhibit?

Examiner Norwood: Certainly.

Mr. Leisure: Exhibit 985-F, Mr. Reiter, there is a gentleman addressed here by the name of W. E. Bowie. I wonder if you know who he is?

3944 The Witness: No, I do not.

Mr. Leisure: That is apparently an inter-office

communication of some kind, is it not? That is not an Institute file paper, is it; it apparently is an inter-office communication of some kind, is it not?

The Witness: Yes. I don't know who Bowie is. It apparently is an inter-office communication.

Examiner Norwood: Inter-office where?

The Witness: In one of the cement companies. A sales-manager addresses his district sales-manager.

Examiner Norwood: Is it an answer to one of the letters, or something like that?

Mr. Leisure: No, it is in the form of a letter. There are some initials there. I believe we also have the understanding, have we not, that the markings and initials unless they are specifically called attention to, they are not admitted in evidence?

Examiner Norwood: They are not considered except as identifying marks.

Mr. Leisure: I notice someone has written something in ink here on this photostat. I thought we had the understanding that unless it was specifically called attention to, it was not received in evidence.

Examiner Norwood: I think so.

3945 Mr. Wooden: It is more my understanding, that unless specifically excluded, they belong.

Mr. Leisure: Oh, no. Tht general practice is that unless a writing on the side is called attention to and mentioned, it is not offered in evidence. If you want it in evidence, you certainly want to point it up and see who wrote it, and why.

Examiner Norwood: Yes, it must be identified.

Mr. Wooden: As to the notations, yes.

Mr. Leisure: Since it is from a respondent, I have no objection to it, but I did not want it to stay in the record as it was, appearing to be from Institute files, when

3946 on its face it shows it is not.

Mr. Wooden: It is clear now.

(COM. EX. 985-A to N was offered and received in evidence.)

3949 Examiner Norwood: Do you offer both of those exhibits in evidence?

Mr. Wooden: Yes.

By Mr. Wooden:

Q. I would be glad to have Mr. Reiter look at them and say if he does not recognize them as copies of Code

Authority files, or I mean of the Trade Practice Committee files?

A. Yes, I recognize these as copies of letters in the files of the Code Authority—

Q. (Interposing) Or Trade Practice Committee?

A. (Continuing) Or of the Trade Practice Committee.

Examiner Norwood: Is there any objection to those exhibits, or do the counsel want longer to look at them?

Mr. Leisure: No objection.

Examiner Norwood: 308-B to F and 326, identified by the witness, are received as marked.

(COM. EX. 308-B to F and 326 were offered and received in evidence.)

3951 Washington, D. C.,
Wednesday, March 9, 1938.

3953 GEORGE H. REITER was thereupon recalled as a witness for the Commission and, having been previously duly sworn, testified further as follows:

Direct Examination by Mr. Wooden (Continued)

Q. Mr. Reiter, showing you papers marked 986-A, B and C, the first one being a photostatic copy of a communication of yours apparently to Mr. Cree, of the Aetna Portland Cement Company, the second an original letter addressed to Mr. Cree by you, and the third a carbon copy of a letter addressed to you by Mr. Lingemann, will you identify those as authentic documents representing correspondence between you and the parties indicated (handing documents)?

A. (Examining documents:) Yes, I so accept that.

Mr. Wooden: I offer them for the record.

(Discussion off the record.)

Examiner Norwood: Any objection?

Mr. Zimmerman: We have not finished looking
3954 at them as yet.

Mr. Leisure: These exhibits, Your Honor, are under the code period, and I believe we have a general objection that it is incompetent, irrelevant and immaterial.

Examiner Norwood: Yes.

Mr. Leisure: The oral testimony and the exhibits dur-

ing that period having the sanction of the Government we feel that it does not come within the issues of this case.

(COM. EX. 986-A to C was offered and received in evidence.)

3957 Q. Referring to Exhibit 986-A, Mr. Reiter, in the last paragraph you ask Mr. Cree to forward to the Cement Institute on a form provided for that purpose, authority to change the destination on a certain contract from Dearborn to the proper destination. Will you explain what the facts underlying that request were?

A. I don't remember, except that the Cement Institute in their contracting reporting had forms for reporting contracts which included the destination at which cement was sold, and it is quite evident that he had reported a contract to the Cement Institute with the wrong desination, and I was suggesting that he change that information.

Q. And the wrong information, would that involve a wrong destination price?

A. Well, it may have been or it may not have. I would not know from this.

Q. Would there be any interest in it unless it did involve a wrong destination price?

A. Oh, yes.

Q. What would that interest be?

A. Bear in mind that this is the Cement Institute, and all of the thousands of contracts that were filed there from time to time were filed as to the place of sale and reported in that manner. That was the reason aside from the price.

3958 Q. Referring to Exhibit 986-B, I notice that you sent a copy of that to Mr. Johnson, the president of the company.

A. Yes, sir.

Q. Was that usual for you to send copies of your communications with sales officials to the heads of their Companies?

A. That was at Mr. Johnson's request.

Q. That was a case there, was it not, that involved the quotation of a certain destination cost, government destination cost, as a destination price, was it not? They got the right figure but on the wrong basis?

A. Yes, it was a quotation of a figure filed with us as a government destination cost as a delivered price.

Q. And the government destination cost was based on an estimated land grant rate?

A. Well, I could not say. It may be the exact one which was known to the filer or it may have been one computed by the railroad.

Q. But if based on any land grant rate, if that were quoted as a destination price instead of a government destination cost, it meant that the destination price was really considerably under what the destination price would have been if quoted on a commercial rate basis?

A. It would be under to a greater or less extent depending upon the conditions.

Q. Did you ever have any discussion with Mr.
3959 Johnson or correspondence with Mr. Johnson about that particular matter other than the sending of the copy to him?

A. Not so far as I know, Mr. Wooden.

Q. Did Mr. Johnson ever explain to you why he wanted a copy of the correspondence sent to him?

A. Well, I am sure that we had a letter from him asking that that be done. I don't remember whether that letter gave a reason for that request or not. We would not question such a request whether a reason was or was not given.

Examiner Norwood: Did you know what his reason was?

The Witness: No, I did not know.

3961 Q. Did there come to you, Mr. Reiter, information from any members of the trade critical of the practices and policies of the Aetna Company?

A. Yes, Mr. Wooden, in this manner,—the Code Authority had two or three complaints filed with them against the Aetna Company.

Q. Did you have some complaint after the Code
3962 had expired and the Trade Practice Committee was carrying on?

A. I don't recollect that we did.

Q. Do you recall anything about a situation in the Upper Peninsula in Michigan during the summer of 1935 which involved several concerns, including the Aetna up there and unsettled conditions that ensued?

A. I have a very hazy recollection. I would not be able to give you any details about the case at all. I think there was some sort of a complaint there, Mr. Wooden.

3963 Q. Were you aware of any of the meet. s that were being held as shown by evidence in the record between the Aetna Company and its competition following the code period?

A. I read a transcript, a copy of the—

Q. (Interposing) No, I don't mean what you learned since, but were you aware at the time of any of those meetings between Aetna and its competitors?

A. No, sir.

A. H. TACKETT was recalled as a witness for the Commission and, having been previously duly sworn, testified further as follows:

3964 *Direct Examination by Mr. MacIntyre.*

Q. Mr. Tackett, you have previously testified in this case concerning the work that you have done for the Federal Trade Commission in connection with an investigation of the cement industry. Will you please state at this time whether or not in connection with that work you had an occasion to secure from the Cowham Engineering Company any papers, which have been selected by Commission's representatives from its files, either directly, or through representatives, or from representatives of that company?

A. The report of the investigation shows that on August 20, 1931, I received a number of papers from a Mr. Appel, of Washington, D. C., as attorney for Cowham Engineering Company. I have got to see the name of it. (Examining documents.)

Q. Of Chicago, Illinois?

A. I take it they are of Chicago, Illinois, yes, sir.

Q. The papers were submitted to you by him after they had been selected from the files of the company by representatives of the Commission, wasn't that correct?

A. Yes, sir.

Q. I hand you papers marked for identification as Commission's Exhibits 988-A to J, inclusive, and ask you to state what you know about those, Mr. Tackett.

(Discussion off the record.)

3965 Examiner Norwood: Go ahead with your 988.

A. Exhibits marked 988-A, B, C, D, E, F, G, H, I and J are shown by the record of the investigation as photostatic copies of documents delivered to me by Mr. Appel at that time for the purpose of having photostat copies made.

Q. And he stated to you that they were the papers as he delivered them to you which had been selected from the

files of the Cowham Engineering Company by representatives of the Commission in connection with that association?

A. Yes, sir.

3969 Examiner Norwood: Any objection to those exhibits, gentlemen?

Mr. Leisure: May I ask the witness a question?

Examiner Norwood: Certainly.

Mr. Leisure: Mr. Tackett, this Exhibit 988-A and B appears to be a letter from a Mr. J. B. Johnson. Do you know who Mr. Johnson was?

The Witness: No, I don't know who he was, at this time. I don't recall.

Mr. Leisure: I notice the letter seems to be addressed as a personal letter. It is not addressed in care of any company or anything of that kind. Do you know what position Mr. Caskey held?

The Witness: No, I do not.

Mr. Leisure: I notice the letter is dated back in 1929. When did you get it?

The Witness: It was delivered to me in 1931 for the purpose of photostating for the Commission's records. August 20, 1931.

Mr. Leisure: By whom was it delivered?

The Witness: A Mr. Appel, attorney for the Cowan Engineering Company.

Mr. Leisure: Your Honor, I have not taken time to read this exhibit through. It is several pages long, but it appears to me on the face of it that there has been

3970 no proper basis for offering it in evidence in this case. There has been nothing shown so far as to who Mr. Johnson was, whether he had any authority to write a letter that would bind any of these respondents. The whole document is totally incompetent, immaterial and irrelevant at the present time.

Examiner Norwood: Is that the Mr. Johnson that was president of the Aetna Company?

Mr. Leisure: No, sir, that is a different man. This is Mr. J. B. Johnson.

3971 Examiner Norwood: I will read this letter and then rule upon your objection.

Mr. Leisure: Could I ask the witness a question about this second letter, 988-C to F?

Examiner Norwood: Yes.

Mr. Leisure: Where did that letter come from, Mr. Tackett?

The Witness: This letter was one of the documents delivered to me by Mr. Appel for purpose of photostating on that date.

Examiner Norwood: Did you have anything further to say on this Exhibit 988-A and B?

3972 Mr. Leisure: I think the record shows pretty plainly since this trial started in December that I never insisted on any technical objections. My objection goes much further than the suggestion made by counsel. Here is a letter that is addressed to some one by the name of Caskey, and it shows on its face that it is a personal letter because it does not address him in his official capacity, from some one by the name of Johnson who has no power, no agency relation, no authority to bind any of these respondents. Personally, I am not interested at all in what Mr. Johnson wrote about, and I do not think this Commission is unless he in some way had some authority to bind the respondents. My objection is not a captious one; I want some evidence that Mr. Johnson had some right

3973 to write the letter binding the people that I represent.

Mr. MacIntyre: One point further, if your Honor please, and that is this, that irrespective of who Mr. Johnson is—we can prove as I have stated that he was in the employ of the company from whom the paper was secured—but irrespective as to whether he was or was not, this memorandum as it shows on its face is an inter-office memorandum in their files and it behooves them to explain how it got there and who Mr. Johnson it.

Examiner Norwood: I think you have to show a little more about that. I am not satisfied with it yet.

Mr. MacIntyre: In many cases we have received unsigned and undated memos from the files of the respondents, not knowing who put them there, who wrote them, or in what capacity the person was serving that did write them, but they were damaging admissions against interest in the files of the respondents.

Mr. Leisure: This is not from the file of a respondent.

Mr. McPherson: I represented the Cowan Company at the time this letter was written and at the time Mr. Appel gave the papers to this gentleman here. The fact as has been well put by Mr. Leisure is that the Cowan Company is not a respondent, the Cowan Company is a Delaware

corporation owning parts of the capital stock of the
3974 three constituent companies mentioned by Mr. MacIntyre plus the Signal Mountain Portland Cement Company. My recollection is that Mr. Caskey at the time this letter was written was not an official and not a director but was an employe, I think an assistant manager of the Signal Mountain Company at Chattanooga. I have no recollection or knowledge of who Mr. Johnson was, but I think I can with entire truth say that he was not a director, officer, nor did he have any connection with the Cowan Engineering Company. He may have been an employee of one of the constituent companies. Certainly he had no power to bind even the Cowan Engineering Company or any of its constituents, and how by any stretch of the imagination he could bind any of these other respondents is beyond me. I reiterate the objection.

3975 Examiner Norwood: If he is an employee of the company and those letters relate to the business of the company and relate to the subject-matter here—

Mr. Leisure (Interposing): The company is not a respondent.

Examiner Norwood: If the Commission shows that—well, if he is connected up with them, if the Commission shows that, it probably would be admissible, but I do not think it is in satisfactory shape now. I will reserve the ruling until I can study those papers there or until some further testimony is introduced showing who the parties are that are writing this and what they were.

3976 Mr. Leisure: As to the second exhibit proffered, being 988-C to F, it has not been sufficiently identified in any way, but I will not make any objection to it because it appears to be signed by a man who was connected with one of the respondent companies, but it does not come from the files of a respondent company. It is a photostat and is in no way properly identified, but we make no objection on that ground.

(COM. EX. 988-C to F was offered and received in evidence.)

3977 GEORGE H. REITER was thereupon recalled as a witness for the Commission and, having been previously duly sworn, testified further as follows:

Direct Examination By Mr. Wooden (Resumed).

Q. Showing you Mr. Reiter, papers marked for identification 987-A to G, inclusive, will you identify them as authentic copies of documents representing correspondence between the Code Authority and various members of the industry, during 1934 and 1935? For your information, the typewritten material came from the files of Mr. Neylan.

A. Yes, Mr. Wooden.

(Discussion off the record.)

Mr. Wooden: I offer them for the record.

Examiner Norwood: Any objection?

Mr. Leisure: As to the entire exhibit, Your Honor, it deals with the code periods.

Examiner Norwood, All right.

Mr. Leisure: I think we have our objection on that. I will not reiterate it.

Examiner Norwood: Yes.

Mr. Leisure: But as to 987-A, B and C, being a series of correspondence between the Code Authority and a non-member, I mean a non-respondent, I do not see how
3978 under any possible rules of evidence it could be offered against the respondents in this case, and I therefore object to it as being incompetent, irrelevant and immaterial.

Mr. Wooden: It is apparent again and again that the Code Authority was the creation of the Institute.

Examiner Norwood: I think we have had that up, as well as the other point, and the respondents have so many exceptions on that that they need not really go to the trouble of making an objection any further. Do you think so?

(COM. EX. 987-A to G was offered and received in evidence.)

Q. Referring to 987-A, do you know, Mr. Reiter, what the basing adopted by the Southern California mills was, as referred to there?

A. No, I do not.

Q. I take it there were basing points existing in California at the time?

A. I don't know, Mr. Wooden.

The members of the industry out there filed destination prices as a rule with the Code Authority. I think
3979 there were some prices filed there also f. o. b. mill.

Q. Referring to 987-G, a letter of Mr. Treanor, to you, in April, 1935, can you explain what he meant by "the nominal code prices listed at certain San Joaquin Valley points (handing documents to witness)?

A. (Examining documents.): This is not complete. I think there are some other letters there that refer to this.

Q. I think that refers to it somewhat (handing document to the witness).

A. The method of filing prices with the Code Authority by the members of the industry on the Pacific Coast, unlike those in the East and the Middle West, was to send us long lists of prices in printed form, and I think I see a case here where it was charged that one of these companies filed a list of such prices for a portion of California and anticipated the effective date of those prices contrary to the code.

3980 By Mr. Wooden:

Q. That was supposed to be a five-day period before they became effective?

A. Yes; five days after they filed with us then the prices became operative and were subject to quotation.

Now, specifically answering your question, when Mr. Treanor says—what is it?

Q. "The nominal code price list for the San Joaquin Valley."

A. When Mr. Treanor speaks of the nominal code price list at certain San Joaquin Valley points I interpret that to mean the prices which were on file with the Code Authority and effective.

Q. Now, I refer you to a change in the basing point from Monolith or Merced to Los Angeles, induced by a reduction of duly filed Los Angeles prices.

A. Yes, I read that.

3981 Q. Does that mean that the basing point that had been in effect in the San Joaquin Valley was charged to another basing point because the sum of the basing point price plus freight from Los Angeles made it lower from the other basing point that had previously determined the price in that vicinity?

A. I understand that to be what Mr. Treanor says.

Q. That is the general rule, is it not, regarding what particular basing point determines the price at a given destination, that is, it is the sum of the lowest basing point price plus the freight, or the lowest sum?

Mr. Leisure: Now, a general rule of what company, what respondent; the Institute or this witness?

By Mr. Wooden:

Q. (Continuing.) Let me say the general practice instead of the general rule.

Mr. Leisure: It is the same objection unless he specifies what respondent.

Examiner Norwood: It means the general practice in the industry, does it not?

Mr. Wooden: Yes.

Examiner Norwood: Answer the question.

The Witness: I don't know to what extent that practice is general.

Where the so-called basing point system is used, and that is a method or a procedure with which I am
3982 familiar, that is the way the destination prices are determined or changed.

Mr. Wooden: At this time, reverting to the matter of the Cowan Engineering Company material, Your Honor, which was identified by Mr. Tackett, I should like to offer the remainder of the file which he identified, consisting of 988-G to J, inclusive, and point out that 988-I shows the position of this man J. B. Johnson to have been that of general traffic manager, and 988-I is a letter from the Institute to him as such.

Examiner Norwood: We will take a ten-minute recess.

(Whereupon, a short recess was taken, after which the hearing was resumed.)

3983 Examiner Norwood: Do you have any objection to the proffer of the papers marked 988-G to J?

Mr. MacPherson: If Your Honor please, I have no objection to those letters as such. I do object to the letter addressed to Mr. Johnson as traffic manager as being written some months later than the ones which you and I discussed here, and having no probative value in showing what Johnson's job was some six or eight months before.

Mr. Wooden: That may have been true if it were the week before or the day before.

Examiner Norwood: Any other objection to this last proffer?

(No response.)

Examiner Norwood: Exhibit 988-I is from the general manager of the Cement Institute of New York, is it not?

The Witness: From Mr. McConnell.

Examiner Norwood: That is his signature, is it not?

The Witness: No, sir, it sems to be signed by some one else with an initial there.

Examiner Norwood: What files did these letters come from?

Mr. Wooden: They came from the Cowham file 3984. vouched for by Mr. Tackett along with those others as received from the attorney for the Cowham Company.

Examiner Norwood: I think all of these tie in here on this matter, and it relates to the procedure there with the Institute as to freight tables, and so on, and I think it all comes in. The objection is overruled. 988-G to J and also 988-A and B are received in evidence.

Mr. Leisure: Your Honor, as to A and B, I think the record ought to be clear, and I am not sure that Your Honor understands, that the Freight Bureau that is mentioned in Exhibit 988-A and B is an independent organization that was run by a man here in Washington that had no connection with any cement company much less any one of these respondents.

Examiner Norwood: I understand that.

Mr. Leisure: And this National Freight Rate Bureau was not connected with the Institute nor with the Code Authority.

Mr. Wooden: This was of course long before the Code Authority, but the service was taken by cement mills.

Mr. Leisure: Even on the argument that counsel has heretofore made as to the Code Authority and the Institute and some cement company, we have got to stretch it 3985 still further now and say that letters concerning a freight rate bureau that has no connection with any of these respondents, that that kind of correspondence will be admitted.

Mr. Wooden: They were then in an intermediary stage, Your Honor, betwen the service subscribed to from this independent organization and installing their own service which they did after a few months, and the primary pur-

pose of offering 988-A and B is in this statement here of Mr. Johnson's that the use of the service, the principal features of it are "That our principal competitors will be using the same rate books that we are, resulting in uniformity."

Mr. Leisure: He is talking about a different organization than the one we have got in this case.

Examiner Norwood: It deals with the question of freight rates and lists giving freight rates, and the purpose for which they were used.

Mr. Leisure: With which these respondents had no connection whatever.

Examiner Norwood: These respondents must be connected up with all of this of course, before it can be used against them in any way.

Mr. Leisure: I think it ought to be connected before it is admitted in evidence.

3986 (COM. EX. 988-A, B, G, H, I, and J was offered and received in evidence.)

Mr. Wooden: It is a statement by a responsible official of one of the respondent companies about the purpose of the freight rate service.

By Mr. Wooden:

Q. Mr. Reiter, I am showing you papers marked 989-A to D, inclusive, purporting to be copies of communications passing between you as chairman of the Trade Practice Committee in August, 1935, and various cement companies. They relate to and supplement—or I will let you say it—Exhibit 277-GG to JJ, inclusive, which are already in evidence. They do not duplicate it, they supplement it. Will you accept them as authentic copies of the originals they purport to represent?

A. Yes, I accept them as such.

Mr. Wooden: I now offer them in evidence.

By Mr. Wooden:

Q. And was I correct in saying that they related to the same matters these other exhibits, 277-GG to JJ?

A. Yes, sir.

3987 (COM. EX. 989-A to D was offered and received in evidence.)

Q. Referring to 989-D, wherein the Louisville Cement Company expressed their regret about misunderstanding

the matter, and stated that they would be governed accordingly on any future quotations, is that as far as the matter went? Is that the only outcome or settlement that was arrived at in that case?

A. Yes, sir.

Q. I notice in 989-C that you called the attention of these various parties to the use of the Institute's Kentucky freight rate book, and pointed out what the proper bid at Dam 35 should have been, according to the use of that book?

A. Yes, Mr. Wooden.

And the point was this, that that freight rate book showed that there was a station point at Dam 35,
3988 in addition to a station point at New Richmond, Kentucky, I believe.

Q. Yes.

A. And, therefore, the price filed for Dam 35 of—

Q. (Interposing): $2.22, I believe.

A. Of $2.22 showed that it could apply to land delivery. That was the only reference to the freight book intended.

Mr. Zimmerman: Will you permit off the record this question:

(Discussion off the record.)

Mr. Wooden: I should like to offer at this time, your Honor, exhibits marked for identification and previously identified, numbers 290-D, E and F. They were identified, I believe, by Mr. Widman, as copied from the files of International, of Mr. Neylan.

(COM. EX. 290-D, E and F was offered and received in (evidence.)

Mr. Leisure: May we have an objection to all this code period material, and I think we have, have we not, on the record, your Honor?

Examiner Norwood: Yes.

3991 Q. It was your practice, was it not, Mr. Reiter, to send copies of your correspondence as chairman of the Trade Practice Committee to the members of the Trade Practice Committee?

A. Yes, sir.

Q. And Mr. Neylan was one of those, was he not?

A. Yes, sir.

Q. I am showing you these papers, 290-D, E and F (handing documents to the witness). Do you remember the correspondence represented by those papers?

3993 The Witness: If it is not already plain, I want to
3994 make it plain that these are not copies of letters which were sent from my office to members of the Trade Practice Committee. They are in the form in which those copies were sent out, and as I said earlier today, I have but a very hazy recollection of this matter discussed in these letters.

Examiner Norwood: Do you mean that they are not carbon copies of your letters?

The Witness: No, sir, they are not.

By Mr. Wooden:

Q. Do you have any doubt about their authenticity as being copies?

3995 The Witness: I don't know that these are true copies of my letters, but I have no reason to doubt their being true copies.

Examiner Norwood: Off the record.

(Discussion off the record.)

By Mr. Wooden:

Q. Are you willing to accept them as authentic copies of correspondence to which you were a party?

The Witness: I will accept them.

3997 Q. I am showing you now, Mr. Reiter, papers marked for identification 990-A, B and C. Will you state whether or not those papers are the same as the papers marked 290-D, E and F?

Examiner Norwood: That is, they are letters which are copies of the former?

Mr. Wooden: No, not copies. Are they duplicates of them?

A. In checking these I find minor differences, such as differences in paragraphing and names of those to whom copies were sent, but in this short checking I find no measured difference.

By Mr. Wooden:

Q. On the 990-B the names are at the top of the page and on 290-E they are not, is that the difference?

A. There seems to be ten names in one case and nine in the other.

Q. The nine are the same as the nine of the ten?

A. Mr. Warren's name does not appear on 290-E.

3998 Q. All the other names are the same apparently?

A. All the other names are the same.

Q. Is 990-D on a regular form letterhead of the Cement Institute?

A. Yes, that is the form and on the letterhead on which we sent copies of letters to members of the Trade Practice Committee and others.

Q. And did you send copies of 290-E and of 990-B to the names that were listed on those respective exhibits?

A. Yes, sir.

Q. Was a copy also sent of 990-B to Mr. Johnson of the Aetna Company?

A. Yes, a copy was sent to Mr. Johnson.

3999 (COM. EX. 990-A, B, and C was offered and received in evidence.).

4000 Q. Mr. Reiter, I gather from 990-A B and C, that in the summer of 1935 there was a condition at Sault Sainte Marie in upper Michigan where there was confusion existing as to prices and a condition characterized by a variation in prices quoted to the city of Sault Sainte Marie, is that it?

A. Yes, sir.

Q. Did the Institute finally ascertain the reason for that confusion there?

A. I don't think that we ever went to the bottom of that case.

Having my memory refreshed by those papers, it is apparent that the bids talked about were made by dealers and not by cement companies.

4001 Q. Ordinarily, the bids made by dealers are with regard to particular brands of cement, that is made by particular manufacturers, are they not?

A. Sometimes a dealer will bid on one or more name brands. Sometimes he will just bid without naming the brand.

Q. Was the Aetna Company held or considered as responsible for that confusion in prices there by any one, or was it charged with being responsible?

4002 Examiner Norwood: Yes. Answer that by stating matters of fact within your knowledge.

The Witness: As a matter of fact, answering for myself as chairman of this Trade Practice Committee of the Cement Institute, I did not know who was responsible for it, and I do not believe, Mr. Wooden, that this is the complete correspondence in connection with that case, but I

believe the complete correspondence would show that we communicated in the same way with every cement company who had filed under the code, or with the Cement Institute, a price for the city of Sault Sainte Marie.

By Mr. Wooden:

4003 Q. You say filed under the code. This is a couple of months after the code?

A. That is right.

Q. Was there some objection on the part of some of your members to continue the filing of prices after the N. R. A. Code passed out?

A. Yes, Mr. Wooden, some of them stopped filing entirely. In fact, some of them stopped filing before the date of the Schechter decision.

Q. Did any of them give his reasons for their objection to filing their prices that they were fearful of its legality?

4004 A. Not so far as I remember, Mr. Wooden.

By Mr. Wooden:

4005 Q. I am showing you a paper marked 274-F for identification, a copy of a letter addressed to you. Does that refresh your recollection on the point that you just answered about (handing document)?

A. (Examining document): Yes, it does.

Mr. Wooden: This was previously identified, Your Honor. I will offer it for the record at this time. That is another one of those that came from the files of the International.

Examiner Norwood: What exhibit number and letters are that?

Mr. Zimmerman: 274-F, is it not?

Examiner Norwood: 274-F.

(Discussion off the record.)

Mr. Zimmerman: Will counsel give us the page referred to in the record as to its identification?

Mr. Wooden: I think I can.

Examiner Norwood: It was on January 11th. Is there any objection to it?

Mr. Leisure: No objection.

(COM. EX. 274-F was offered and received in evidence.)

4006 Q. Do you remember, Mr. Reiter, whether or not Mr. Coogan of the Alpha Company was opposed to price reporting?

A. Yes, sir, I do remember that he was.

Q. Did you ever discuss with him the reasons for his objection?

A. I am not sure that I have, Mr. Wooden.

Q. Can you say whether or not his objection was similar in character to that of the Volunteer Portland Cement Company?

Mr. Zimmerman: It does not appear to be an objection of the Volunteer as I read it, but they were just in doubt and wanted to know what was legal, and what was not.

Mr. Wooden: Class it as an objection or not, they were uncertain about it then.

Mr. Zimmerman: Yes.

A. In answer to your question at the time I do not recollect any statements of Mr. Coogan regarding, specifically regarding why they were not in favor of continuing filing of open prices.

Mr. Wooden: I offer at this time exhibit marked 274-C for identification previously. It is a copy of a letter from Mr. Lucas, a member of the Trade Practice Committee, to Mr. Reiter in November, 1935.

4007 Examiner Norwood: Any objection?

(No response.)

Examiner Norwood: Received as marked.

(COM. EX. 274-C was offered and received in evidence.)

Q. During the code period, Mr. Reiter, were the terms of payment and the time within which discounts might be taken the same throughout the country or did they vary by districts?

A. They were the same throughout the country for a period, and then a company on the Pacific Coast filed as a condition of their prices, different terms of cash discount, and that filing was met by their competitors, other cement companies on the West Coast.

Q. Was that a more favorable discount from the buyer's standpoint than previously?

A. It would be hard to say. It was greater in amount.

Q. That answers my question. I show you Exhibit 991 for identification. Will you identify that as an authentic reproduction of a circular of the Institute regarding the cessation of price filing in December, 1935?

A. Yes, sir.

Mr. Wooden: I offer this just to complete that

4008 phase of the subject.

Mr. Leisure: We have no objection to the exhibit, Your Honor.

Mr. Zimmerman: And I have no objection to the exhibit.

(COM. EX. 991 was offered and received in evidence.)

Q. Mr. Reiter, will you state generally just what relations you had as general manager of the Institute toward the operation of the freight bureaus of the Institute?

A. As general manager, I was in general charge of all activities of the Cement Institute. For a period of the time when I was general manager, there was a Division Manager at New York, and the Bethlehem Freight Bureau office operated primarily under his direction at that time. However, the Chicago Freight Bureau office operated directly under me. Then when the division office of the Cement Institute at New York was abandoned, the Freight Rate Bureau at Bethlehem also came directly under my jurisdiction.

Q. And when was that abandoned?

A. That was October 1, 1936.

4009 Q. Did you handle correspondence and sign correspondence prepared for you by the manager of the Freight Bureau?

A. I did occasionally so far as the Chicago Freight Rate Bureau was concerned, but never did for the Bethlehem Freight Rate Bureau.

Q. Were those Freight Rate Bureaus supported by special dues of some sort?

A. Yes, sir.

Q. Will you state what the special dues were?

A. The cost of the Freight Rate Bureau was included as an unspecified part of special dues paid by members of the United States Bureau of Mines Districts 1, 2, 3, 4, 5, 6 and 7, and then by special arrangement between the Chicago Division and the Kansas City Division and between the Chicago Division and members having plants in the State of Texas, a special fee was paid to the Chicago Division for the service performed in that territory outside of the Chicago Division.

Q. There was put in evidence this morning a letter showing in the early days of the Institute the freight rate compilations for various States parcelled out among different companies to prepare.

A. That practice was put into effect in a part of the

territory covered by the Bethlehem Freight Rate Bureau, namely in Districts, 1, 2, and 6. To what extent, I do not know, Mr. Wooden, but that was not the practice in
4010 the territory covered by the Chicago Freight Rate Bureau.

Q. And it was only temporary in the first area that you referred to?

A. That is right. So that these books could be gotten out as promptly as possible.

Q. Did the Ideal Companies in the Mountain Territory prepare any freight rate compilations for use by other members of the industry in that territory?

A. I don't know.

Q. To what extent has it been customary for cement mills to have traffic departments of their own?

A. I would say that a cement company of any size or any location would have to have some sort of a traffic department, whether they call it exactly that or not in order to conduct their business.

Q. Do you know whether or not it has been customary and usual for the mills to actually have their own traffic department?

A. Yes, in many cases I know that it has been customary.

Q. You have been sales manager of various companies, the Missouri; at the present the Universal Atlas?

A. Yes, sir.

Mr. Zimmerman: Of various companies?

Mr. Wooden: I just have two in mind. Perhaps I should not say "various."

4011 The Witness: Yes, sir.

By Mr. Wooden:

Q. What sort of a traffic department setup did you have in those two companies?

A. At the time or just before the time that I went with the Missouri Company, they had a very large traffic department for that sized company. The total employees in that traffic department, if my memory serves me correctly, were about 10. That number was progressively reduced until at the time I left there there were two clerks at any rate who were giving all or part of their time to traffic matters in the office. It is necessary to have a traffic representative at mills as well.

Q. What were the functions of such a department?

A. To route shipments, to appear before utilities commissions or the Interstate Commerce Commission in respect to proportionate rates, to check freight bills on both incoming and outgoing freight, to handle claims with railroads, and in general to supervise all traffic matters for the company.

Q. Did they calculate the rates that were to be used in connection with quotations of delivered prices?

A. Well, of course they knew how to pick those out of the railroad tariffs. It was not a question of calculation.

Q. Did they do so? In other words, did they
4012 figure out the rates that were to be used in the calculation of delivered prices?

A. Mr. Wooden, I would have to ask you at what period in order to fully answer your question.

Q. Well, apply it to the Missouri Company and make your own distinction as to the different periods.

4013 A. The Missouri Company used a little different system from other companies which I have known in the cement industry, inasmuch as they had carried forward rates which they originally secured from the tariff for many years in special books of their own, and they used the Cement Institute freight rate book principally for checking their own computations.

Other companies to my knowledge much simplified their work by using primarily the freight rate information furnished in the Cement Institute book.

Q. And did the Missouri Company later adopt the latter method?

A. No, they never did.

Q. There was some change I thought you indicated in their policy at different times.

A. The policy of carrying forward subject only to their check and that from the Cement Institute freight rate book existed all the time I was there.

I think necessarily the practice must have changed that was in effect where this larger traffic bureau was that I tell you about.

Q. What was the reason for the great reduction in size of that traffic bureau?

A. I would hesitate on that, inasmuch as they did not come under my management.

4014 Q. I infer from what you have already said that it was not because of the substitution of the freight

rate books of the Institute, or did that have something to do with it?

A. I imagine it had something to do with it.

Q. Do the remaining clerks of the company, the freight rate clerks of the Missouri Company so calculate freight rates?

A. Of course, Mr. Wooden, I am not familiar with what they do now.

Q. How about your knowledge of other companies, your general knowledge of the way it is handled in the business? To what extent do the clerks in the system calculate the applicable freight rates for destination prices?

A. I can make this sort of an answer: that judging from our experience with the distribution of freight rate books by the Cement Institute in the territory served by those books, substantially all companies use those for sales purposes rather than to prepare their own books.

I judge that by the number of multiple copies which were sent to various cement companies.

Q. They were not using them for shipping purposes so much as for the purpose of calculating destination prices?

4015 The Witness: Shipping books must have the routes.

By Mr. Wooden:

Q. Must have what?

A. The routes, the names of the railroads over which the rate applies.

These books can be used as shipping books by the addition of this route information.

Q. But that would have to be supplemented by the company's own information?

A. Yes.

Q. The Institute did not furnish that route information?

A. That is right, because—

Q. (Interposing) Were the freight rate books largely used by salesmen?

A. I understand that multiple copies of these books, where they were requested by members of the Cement
4016 Institute, indicated that they were given to salesmen in that territory, who carried them as a part of his field equipment.

4018 H. B. ROBESON was thereupon recalled as a witness for the Commission and, having been previously duly sworn, testified further as follows:

Direct Examination by Mr. Wooden.

Q. You are in charge of the sales, I understand, Mr. Robeson, of the Nazareth Cement Company?

A. That is correct, sir.

Q. Is that one of the smaller concerns in the eastern part of the country?

A. Yes, sir, a single unit mill.

Q. What is the sales territory in which you operate?

A. Well, the North Atlantic States, touching the southern part of Maine and going as far west in Pennsylvania as about Altoona and about as far south as Washington.

Q. Have you sometimes quoted and sold down in North Carolina?

A. Never in my recollection. If we did, it might be some stray instance where we had a particular—

4019 Q. (Interrupting) To the State Highway Department, for instance?

A. No, never to the State Highway Department within my recollection.

Q. Does your company have just the one mill?

A. One mill, yes, sir.

Q. What sort of a traffic department does it have?

A. Well, not much of a traffic department. We have one man who might be called our traffic manager and represents us at the utility hearings and things of that kind, but he is a sort of a jack of all trades. He is the chief clerk of the sales department, the credit manager and the assistant treasurer?

Q. Do you have anyone in your organization who is capable of calculating freight rates?

A. He would come about as close to it as anybody.

Q. Is he capable of doing it?

A. Yes, I would say so.

4020 Q. To what extent does he calculate freight rates?

A. Well, he is capable of course, when an order comes through, of looking back in his tariffs as against his routing to see whether or not the freight rate applies over the particular routing that he is sending the material out on. In other words, he is capable of reading a tariff.

Q. To what extent does anyone in your organization calculate or apply the freight rates on your shipments?

A. Well, that is a matter of daily routine, in other words, as your orders are made up and your bill of ladings are made up for the day, they are filed with the railroads, and again your railroad will check your rate as you are filing your bills of lading that night.

Q. That is for shipping purposes?

A. That is for shipping purposes, yes, sir.

Q. Does anyone in your organization engage in figuring freight rates or applying freight rates for pricing purposes?

A. Well, we must as a matter of routine. In other words, the district offices, based on the last instructions, would follow through with their price, the copies of their quotations would come through to the Nazareth office,
4021 and then this self-same fellow, this jack of all trades who is the chief clerk of the sales department, would probably cast his eyes over those every morning on receipt of the previous day's mail from the district office.

4022 Q. Do you mean he checks over the destination prices which your district offices report?

A. Yes, that would be a matter of routine where they are issuing quotations.

Q. Does your company subscribe to the freight rate book service of the Institute?

A. Yes.

Q. How many copies do you take?

A. I would not know offhand, but my recollection of it would be say five or six,—for the various States which we are interested in.

Q. What use is made of the freight rate books that you get from the Institute?

A. What use?

Q. Yes.

A. Well, the district offices would use those again in checking back their delivered prices, in other words, all of their prices are made on a delivered basis. The district office would use those in checking back.

Q. Do you mean that your district offices add the freight rates or add the freight shown in the rate books to some mill price?

A. Yes; in other words, the last known information that they had or the last instruction which they had from

the general headquarters at Nazareth. As a matter of
4023 fact, in their daily operation, they are dealing with the same people day in and day out, and a good deal of it is almost routine from previous orders.

Q. Do they add these freight rates to the last known base price which they consider applicable in the territory where they are quoting?

A. It would be something along those lines, in other words, when we are in a change of price, we naturally send out quotations to all of our customers and under our particular routine in our company, as we send those quotations out, we make a carbon copy for the district office so they have those carbon copies in front of them all the time.

Q. Do you receive from time to time lists of base prices in the territory that you are selling in?

A. No, sir.

4027 *Cross Examination by Mr. Leisure.*

Q. Mr. Robeson, the Nazareth Company is too small a company to operate any extensive traffic bureau, is not that so?

A. That is right.

Q. And as a matter of fact you had freight rate books before the formation of the Institute in order to save money, didn't you?

A. Oh, yes. The Nazareth Cement Company was a member of the Nazareth Traffic Bureau back to its first formation, at least before I came with the Nazareth Cement Company.

Q. So that there was no reason for taking one of these freight rate books and checking it against railroad tariffs and do work you were trying to save money on, was there?

A. Right, sir.

Q. You were asked by Mr. Wooden if you made these checks as to correctness. Do you know of any instance when it was discussed later by the railroads and the Institute book was found to be wrong? Do you know of any specific instances?

4028 A. None that comes to my knowledge, sir.

Cross Examination by Mr. Zimmerman.

Q. The freight rate traffic bureau that Nazareth belonged to before the Institute furnished any freight book service charged the company I presume so much a year for that service, and furnished it with a book very similar to the one that is furnished now by the Institute?

A. As I say, the formation of that was before I came with the Nazareth Company; my recollection of it is that there were a group of small companies around there that formed the Nazareth Traffic Bureau.

Q. They got together and had a cooperative enterprise where they shared the cost of the preparation and distribution of a freight rate book?

A. My recollection of it was that it was made up of companies like the Phoenix, Dexter, Penn-Allen, Pennsylvania, Hercules, and Nazareth.

Q. Now, the main difference between that practice and what has been done lately is now that the cost is spread between a greater number of contributors?

A. That is correct, sir.

4029 Q. Or companies?

A. Yes.

Q. How many states do you do business in?

A. I would have to count them.

Q. I mean substantially.

A. The North Atlantic Seaboard. I am a little bit off in my geography there as to how many States we have involved, but what would that be, seven or eight States?

Q. And your district office that you have referred to, is there more than one?

A. One is located in New York and the other located in Philadelphia.

4030 *Cross Examination by Mr. Smith.*

4031 Q. Assume now that the sale has been made at $2.00 at some point distant from Nazareth, your billing would take what form? $2.00 or would it be separated in the freight rate?

A. Do you mean the billing to the customer?

Q. Yes.

A. The billing to the customer would be on a basis of a destination price, that is in making up the invoice, it

would be on the basis of the total per barrel times the destination price, which would give you the gross, which would then show, less the freight rate to that destination.

Q. It would then show less the freight rate?

A. Yes.

Q. And if the railroad corrected your estimate of the freight rate, would you correct your billing?

A. Yes, sir.

Mr. Smith: That is all.

Redirect Examination by Mr. Wooden.

Q. I take it that the customer would pay the railroad freight and deduct it from the face of the invoice?

A. That is correct.

4032 Q. Do you show on the invoice the amount of the freight?

A. The amount of the freight, yes, sir.

Q. The only amount you receive direct from the 4033 customer is the destination price after the freight is deducted and paid to the railroad company, is that correct?

A. That is correct.

GEORGE H. REITER, resumed the stand and testified further as follows:

Direct Examination by Mr. Wooden (Continued)

Q. Now, Mr. Reiter, can you give us some general description of the size and extent and functions of the Traffic Department of the Universal Atlas?

A. Well, it is quite a large size. I am afraid that I could not tell you the total number of employees. However, at the present time, the main traffic office is at Chicago, and sub-traffic offices are at New York, Birmingham, Kansas City, and I believe Duluth in addition to traffic men at all mills, of which there are nine in number.

Mr. Hershberger: You mean nine mills?

The Witness: Nine mills, yes.

By Mr. Wooden:

Q. Will you state just what use is made in the Traffic Department of the Universal Atlas Company, of the freight rate books of the Institute?

A. Since the spring of 1936, only, the Universal
4034 Atlas Cement Company has used the freight rate books of the Cement Institute. Prior to that time, they used rate books of their own compilation. The salesmen in the field carries a copy of the Institute freight rate book applicable to that territory, and upon instructions of the sales department, figures his own destination prices which he quotes. Those prices, by the way, Mr. Wooden, are subject to check when they are received by the salesman's office.

Q. Has your Traffic Department as distinguished from your Sales Department used the Institute rate books?

A. You mean at the present time?

Q. Make any division you want as to time.

A. Up to the time they began to use the Cement Institute freight books generally, they received one copy only of all freight rate books issued by the Cement Institute, inasmuch as they were interested in sales in the entire territory covered by the Cement Institute freight rate books. At the present time, the Traffic Bureau uses the Cement Institute freight rate books for their own purpose as well, checking them as occasion arises, with the tariff.

Q. Would you say that the use by the Traffic Department of the Institute freight rate books is incidental to their traffic function?

A. No, I think it is a part of their work in traffic.

Q. What I am getting at is how important to the
4035 Traffic Department of the company is the rate book compilation of the Institute?

A. It is quite important in that a large amount of work and expense has been saved to the Traffic Department since they began using the Cement Institute freight rate books.

Q. How does that saving come about?

A. Well, prior to that time, they compiled and issued freight rate books of their own, not in cents per hundred pounds as the rate appears in the tariffs, but in cents per barrel, and considerable work and expense was incurred in the preparation of these books which is no longer necessary.

Q. The Traffic Department was not interested in the rates per barrel, was it? They were interested only in the rates per hundred weight? Was it not the Sales Department that was interested in the rates per barrel?

A. The Traffic Department prepared those books for use by the Sales Department.

Q. In former days? That is, before they took the Institute service?

A. That is right.

Q. How did they check with the freight rate books of the Institute that were in use at that time?

A. You mean did the books issued by the Universal Atlas Company check substantially with the books issued?

A. Yes, I believe that they did substantially
4036 check, although one was in cents per barrel, as I say, and the other in cents per hundred pounds.

Q. If they had not been in substantial accord, the destination prices of Universal Atlas would have been different from destination prices of other mills using the other service, wouldn't they?

Mr. Leisure: I object to that as argumentative.

Examiner Norwood: Objection overruled.

The Witness: Inasmuch as applicable commercial freight rates were added to known so-called base prices to determine destination prices, if a different freight rate were used under any circumstances by different companies, they would arrive at different results.

By Mr. Wooden:

Q. Do you have available in the Universal Atlas Company a list of basing point prices that you referred to the other day as having been compiled by Lehigh?

A. I now have available such a list.

Q. How did you obtain such a list?

A. The salesmen are under constant instructions to collect definite information in the field on prices quoted by competitors.

Q. I am referring to the list of basing point prices which you said on a previous occasion you received while you were general manager of the Institute from the Lehigh Company.

4037 A. I misunderstood your question. Do you mean did I have a list as prepared by the Universal Atlas Cement Company at the time that I was with the Cement Institute?

Q. No. I meant since you went with the Universal Atlas after leaving the Institute, whether you have available a list of basing point prices such as the one you referred to as being compiled by Lehigh?

A. The only one I have available with me is the list of so-called basing point prices prepared by the Universal Atlas Cement Company.

Q. All right, that straightens that out. As I understand it, your process in determining the destination price at any particular destination is to add the freight rate to that destination show in the freight rate book of the institute to the applicable basing point price?

4038 A. Mr. Wooden, I would like to say that a little differently, if I may.

We add the applicable rate, transformed into cents per berrel, to a figure which we have at our own mills. And so far as we find that that makes the lowest destination price that method is followed.

Q. That is what I meant by my question. Sometimes you find, do you, that another mill will make the lowest destination price by using its mill as a base, plus the applicable freight rate?

A. Yes, sir.

Q. And in that case you would then meet that?

A. Meet the competitor's price, or retire from the field, or—well, that is generally the two things that are done.

Examiner Norwood: Do you ever underbid him?

By Mr. Wooden:

Q. How many—

Examiner Norwood (interposing): Let him answer.

Mr. Leisure: Let us get an answer.

Mr. Wooden: I beg your pardon.

Mr. Leisure: Let him answer that fully.

Mr. Wooden: I am sorry.

The Witness: I don't at this time have in mind any case where we have the price which we have to meet is less than our own maximum mill net, plus our own

4039 freight rate.

Examiner Norwood: Read that answer.

(The answer was read.)

Examiner Norwood: But you said with regard to the competing price that you either met that competing price, or retired from the field.

My question was do you ever bid under that competing price?

The Witness: I understood your question, Your Honor, and—

Examiner Norwood (Interposing): I think you can answer that yes or no.

The Witness: Well, to the best of my knowledge, no.

By Mr. Wooden:

Q. Did you mean by your maximum mill net your base price?

A. So-called base price, yes.

Q. How many men in your Universal organization are capable of calculating your freight rates, estimating your costs of delivery, figuring out your costs of delivery in cents per barrel?

A. While others may be capable or doing it, it would include at least the whole field force of salesmen, which numbers approximately 170 men.

Q. What was the reason that the freight rate bu-
4040 reau of the Institute were supported by special dues rather than general dues?

A. Because the members of the Cement Institute in all sections of the country did not elect to subscribe to that service.

And in addition to that, the work of preparing these freight rate books is more costly in some sections than others because of sparsely settled communities, or because of smaller shipments of cement.

Q. Is that the only reason you can think of?

A. That is the only reason I know, Mr. Wooden.

Q. Why was it that the Universal Atlas intended so long to do its own calculating of freight rates rather than using the Institute freight rates books?

A. There was a feeling in the traffic department of that company, and also in part in the sales department, that the freight rate books which they isued in cents per barrel were simpler than those issued by the Cement Institute.

And while this may not read very well in the transcript to my own traffic department I must add that probably the traffic department was quite interested in keeping up the volume of their work.

Q. Now, you say the traffic department figured or was of the opinion that their conversion tables or method of converting cents per hundredweight into cents per
4041 barrel is simple?

A. Mr. Wooden, that is not what I said.

Examiner Norwood: No.

By Mr. Wooden:

Q. Then I am mistaken in that. I thought you said simple.

A. One book, namely one book published by the Universal Cement, was in cents per barrel. The Cement Institute book was in cents per hundred pounds, and then had to be converted into cents per barrel before used.

Q. But there was a conversion table along with it, was there not?

A. There was in some of the books.

Q. The basis of the comparison used by the Universal Atlas was the same, was it not, and was that used in the Institute rate books?

A. There was no comparison in the Institute books. There was a table so that anybody could convert for himself.

Q. The result of following through the conversion was the same, was it not, as that of the conversion calculations of the Universal Atlas?

A. If both were properly done, yes, sir.

Q. Now, in the course of those conversions you sometimes found, did you not, that they came out in fractions of a cent per barrel?

A. Yes, sir.

4042 Q. How were such fractions handled?

A. The custom in our company is to drop fractions of less than one-half cent to the next lower cent, and to change fractions in excess of one-half cent to the next higher unit.

Q. That has been the practice in the industry, has it not, to convert in that way?

A. I believe so.

Q. Just in that way?

A. Yes.

Q. The result being that cement is always quoted in even cents per barrel at destination, is that right, that is not in fractional cents, but in even cents, full cents, I will put it that way?

A. I know of few exceptions to that, Mr. Wooden.

4043 Q. Except on government orders?

A. I think that is correct.

Q. Of course, those fractions in government land grant rates are notorious for their size, the number of decimals.

A. It does not necessarily need to be a land grant rate.

Q. Ordinarily the commercial destination price is not in fractional cents, but in even cents per barrel?

A. That is right.

Q. Of course, the railroads, I assume, are not concerned with any such adjustments as that in the way they calculate their freight and collect their freight, and it is simply in the weight and rate per hundred weight, is that right?

A. Yes, sir. Their charge is the product of the published rate per hundred pounds times the number of hundred pounds in the shipment.

Q. And the actual freight is calculated and paid only on that basis? Without regard to these adjustments in fractional cents on a per barrel basis?

A. That is right.

Q. Is it the practice of the Universal Atlas to invoice the customer at the destination price and then show on the invoice the amount of freight?

A. Yes, sir, that is the practice.

Q. Then does the customer deduct that amount of freight in paying for the cement to the company and
4044 pay the freight to the railroad?

A. Yes. He agrees in effect to pay the freight for the account of the shipper.

Q. He pays it to the railroad?

A. He pays it to the railroad.

Q. What does it mean, for the account of the shipper, then?

A. The cement is quoted him at a definite destination price. He pays the freight.

In other words, we still quote and occasionally prepay freight to prepay stations at that, so that it costs that customer the exact amount quoted, and for which he is invoiced per barrel.

Q. But those prepay stations are somewhat the exception rather than the rule, are they not?

A. There is quite a number of them, Mr. Wooden.

Q. What determines whether a station is a prepay station or not?

A. I beg your pardon.

Q. What determines whether a station is a prepay station or not?

A. There is a list of open and prepay stations available to any shipper, and when the station is listed as a prepay station it usually has no agent at that point.

Q. Unless the various mills use the same method of adjustment of fractions in their conversion from the
4045 rates per hundred weight to the rate per barrel, there would be a possibility, would there not, that one mill might be a cent above or a cent below the other?

Mr. Leisure: Now, Your Honor, I do not think we ought to indulge in that kind of argument with the witness, since his answers are to be taken as facts and his testimony in this case against a great many respondents who are not here. It does not calculate to bring out facts.

Examiner Norwood: Read the question.

(The question is read.)

Examiner Norwood: I think he can tell us that based on his experience. The objection is overruled.

The Witness: There is that possibility, yes, Mr. Wooden. However, there are other factors to be taken into consideration. They must use the same rate, and that rate must be used in connection with the same mill price, or they must be meeting the destination price which they know some one else to have quoted.

4046 Q. There would not be any use of a common method of adjusting the rates from one basis to the other basis if some of these other factors were left open to create differences in destination price?

4047 The Witness: I do not believe I could answer that, Mr. Wooden.

By Mr. Wooden:

Q. Referring to Exhibit 136-X, which is a portion of the minutes of the meeting of the members of the Institute of December 13, 1929, it was "Recommended that in order to prevent diversions in violation of paragraph 14 of the Code of Ethics, it was desirable that no freight allowance be shown on manufacturers' invoices." I understood Mr. Robeson to say that he was unaware that the Institute had ever gone on record against the practice of showing the freight allowance on the invoice, and I also understood you, Mr. Reiter, to say that the Universal Company did show the freight allowance on the invoice.

A. That is what I said. As a matter of fact, I do not handle the invoices, but I am sure that I have answered you correctly about that.

4049 Mr. Wooden: I offer in evidence Exhibits for Identification 144-B-1, 144-B-2 and 141-5. These were

identified by Mr. Milwee some weeks ago as I believe coming from the files of the Institute. They bear upon this matter which is now under discussion.

Examiner Norwood: Is there any objection to those?

Mr. Leisure: I am a little lost. I have read these exhibits and I do not see how they are material to any of the issues, and I was wondering if Your Honor felt that they were material.

Mr. Wooden: They relate to the action indicated in the minutes here to which I have just referred.

Mr. Zimmmerman: That same thing back in 1929?

Mr. Wooden: The elimination of freight in invoices.

Mr. Zimerman: I think we could get at it pretty quickly if we could determine whether that has been the practice at any time within the last three years or not. As I understand it, the practice has been generally in the last three years where cement has been sold at destination price, to show the freight on the invoice.

Mr. Wooden: I think you are taking in too much
4050 territory. I think it probably differs in different areas, as the records indicate.

Examiner Norwood: This appears to me to be relevant.

Mr. Zimmerman: Certainly not relevant to any practice within a reasonable period of time.

Examiner Norwood: I think we have gone over that feature of it.

4051 Mr. Zimmerman: The charge has to do not with what we did in 1929 or 1930 or what was recommended there, but what is being done by somebody that should not be continued now.

Mr. Wooden: I differ with you. The charge does specifically run back a number of years.

(COM. EX. 144-B-1, 144-B-2, and 141-5 were offered and received in evidence.)

4052 (COM. EX. 992-A and B was offered and received in evidence.)

Mr. Wooden: I would like to call attention to Exhibit
136-NN and OO, a part of the minutes of the trustees, of January 24, 1930—

4053 Q. Were you aware of the fact, Mr. Reiter, that the trustees had recommended that this matter of the showing of the freight rate or of the freight allowance on the face of the invoice be left to the members of each

4054 division, and that it was not considered applicable to the northeastern division?

A. No, sir, I was not aware of that fact.

Examiner Norwood: Does the exhibit counsel just referred to bear on that point?

Mr. Wooden: Yes, it bears on that point.

Examiner Norwood: All right.

By Mr. Wooden:

Q. Mr. Reiter, were the activities of the freight rate bureaus looked after in any way by a committee of traffic men?

A. Originally the Bethlehem Bureau was organized under the direction of such a committee. I don't know how long that committee functioned.

The Chicago Traffic Bureau was never under any committee.

Q. Was there a so-called Cement Traffic Committee functioning in connection with the work of the Bethlehem Bureau?

A. Well, as I say, there was a committee of that nature, whatever it was called, to start with.

Q. Do you know who the members were?

A. I do not, Mr. Wooden.

Q. Did you ever know of Mr. Gubernator being connected with such a committee?

A. Well, I know of Mr. Gubernator, and I know that he is in charge of traffic for the Lehigh Company; I don't know that he was on that committee.

4055 You see, Mr. Wooden, during the origin of that Bethlehem Bureau it was not in any way under my jurisdiction. Therefore, I would not know of the members of that committee.

4056 Washington, D. C.,
Thursday, March 10, 1938.

4057 GEORGE H. REITER thereupon resumed the witness stand as a witness for the Commission and testified further as follows:

Direct Examination by Mr. Wooden (Resumed)

Q. Mr. Reiter, to what extent has the Institute freight rate book service been subscribed to by non-members of the Institute?

A. I can answer that, Mr. Wooden, only partially up to the time I left the Cement Institute.

I know of one case where a Texas member of the industry not a member of the Cement Institute subscribed to the freight rate service for the State of Texas, and prior to that time there were other members who paid a special dues for freight rate service only. And those companies were in the East, and I don't remember the amount nor the names of the companies.

Q. Did those cases involve non-members of the Institute?

A. Non-members, yes, sir.

4058 Now, there was one other case, Mr. Wooden, that I recollect, where a company that had been a member of the Chicago Division; and therefore had paid a part of the special dues the Cement Institute continued to supply them that service, because their dues were in the fund from which that service was paid.

Q. What was the Texas company that subscribed to the freight rate service?

A. The Republic.

Q. Did non-members pay a special rate as a subscription fee, a rate different than the one paid by members in the form of dues?

A. Yes, sir. These companies in the East that I mentioned paid a specific rate of dues per barrel, but I don't remember what that amount was.

Q. Was it on a somewhat higher basis than the special dues that the members paid?

A. No. It was a lower basis than the special dues, in-

asmuch as the special dues included other services than the freight rate service.

Q. These two freight rate bureaus, one at Chicago and one at Bethlehem, Pennsylvania, I believe, what sort of an organization setup did they have? They were not incorporated bodies, were they?

A. No, sir.

4059 Q. Just the name applied to certain activities centered there and supported by special dues of the Institute members?

A. That is right.

Q. Did any company other than the Universal Atlas compile its own freight rate books?

A. Yes, sir.

Q. Can you name any?

A. I believe the Marquette Company compiled its own freight rate books.

The Lehigh Company did for a time in their western territory, but I think they have discontinued that.

Q. What do you mean by "their western territory"?

A. Well, the territory which is headquartered for them in Chicago.

By Mr. Smith:

Q. Don't you put the Huron in that list too, Mr. Reiter?

A. No, I don't. I don't know whether the Huron does or not.

Let me make it plain, Mr. Wooden, that there may be other companies. I am not pretending to name them all.

By Mr. Wooden:

Q. In the use of the freight books by Universal salesmen for calculating destination prices, what discretion are they allowed in modifying or varying any price terms that the general office gives them?

4060 A. I can't answer for the present time.

The salesman himself is not allowed any discretion in modifying instructions received originally from the general office of the sales department.

Q. Was that the case also when you were in the Missouri Portland cement organization?

A. When I was in the Missouri Portland Cement Company, as I indicated yesterday, a somewhat different method was employed in that instead of furnishing salesmen with freight rate books from which he determined or

computed destination prices, he was furnished with a list of destination prices for the territory which he covered, which were made out in the sales office in St. Louis, and as changes occurred in those destination prices, corrections were sent him from the office and he carried no freight rates.

Q. But as to his salesman's discretion in making any variation or modification of the prices sent him, how about that?

A. He had no discretion.

4061 Q. With reference to these conversion tables which translate the freight rates per hundred weight into barrel rates, the barrel equivalents and the dropping of the fraction of a cent below the half-way point and the adjustment upward to the next cent above the half-way point, can you say why a similar method of adjustment has never been adopted in the case of land grant rates where they have to go into and have these long strings of decimal fractions, in the form of decimals?

4062 Q. Are you aware, Mr. Reiter, that in quotations of government destination costs, that very frequently the prices per barrel resulted in long fractions sometimes running may be eight or ten decimals?

A. I am aware of the fact that frequently the decimal runs to quite a few places. May be ten is an exaggera-

4063 tion, but sometimes six.

Q. All right, we won't quibble about which is the longest. Why wouldn't that be a good field to work in this adjustment of fractions of a cent on a somewhat similar basis to the adjustment made on commercial destination prices?

Mr. Leisure: Whatever this witness' opinion on that very interesting subject might be is not material to the issues in this case, I am sure.

Examiner Norwood: I think he can give us an opinion about the operation of this system here. Objection overruled.

The Witness: Well, this answer may not be entirely responsive, Mr. Wooden. It is my opinion that those fractions were bid in a real effort to give the government the full advantage of the land grant rate.

By Mr. Wooden:

Q. What did that have to do with whether it adjusted the fractions below or above half a cent?

A. If they increased the fraction above a half a cent to the next higher cent, then to their knowledge they would not be giving the government the full advantage of the land grant rate.

Q. If they went the other way?

A. If they dropped off to the lower cent, whatever that fraction was, higher or lower than half a cent, then of
4064 course they would, but as a matter of fact, some bids have recently been made in that manner.

Q. How recently?

A. The first one that I recall—I do not know the location, was I should say about a year or more ago in the southeastern part of the country.

Q. Has that question ever been discussed among cement mill representatives as to whether they should or should not make this similar adjustment on the land grant rate?

A. Not so far as I know, Mr. Wooden.

Q. Yesterday I called attention to some action of the Institute regarding the manner of handling the invoices not to show the amount of the freight allowance as a method of discouraging diversion. Wherein did the appearance of the freight allowance on the invoice have a tendency to encourage diversion?

4065 A. I am assuming that you refer to yesterday in reading from the minutes of a Cement Institute meeting, although I was not present at that meeting, which was the discussion of prepayment of freight to all destinations, or that is what it amounted to.

Now, if I am correct in that assumption the probable reason why that was not done was because of the immense amount of freight that would be prepaid and outstanding by various cement companies.

In such a case diversion would be quite difficult or impossible.

With the present form of invoices in our own company, for example, where freight is shown and correctly shown to one destination, if that freight was diverted to another destination and the invoice was not corrected due to that diversion then the customer would secure his cement at the new destination at a price contrary to the quoted price to the shipping company.

Q. And there was a declaration against that in the code of ethics and also in the N. R. A. Code and in the compendium, was there not?

A. There was in the N. R. A. Code, and as I have said, I am not entirely familiar with what is in the original code of ethics, or in the later compendium.

4067 Q. You spoke something about the objection to having large amounts in the form of prepaid freight outstanding. There was a rule against that too, was there not, during the code of ethics and in the N. R. A. Code?

A. The N. R. A. Code provided that freight should not be prepaid, except to the United States Government and State Governments, and except to railroad stations where the tariffs prescribed that freight should be prepaid from any shipping point.

Q. In keeping the freight allowance on the invoice you are thereby able, are you not, to determine whether there was any diversion of the car for a shipper before the shipper is paid?

A. No, sir; no, Mr. Wooden.

4068 At one time some companies had in their terms of sale the requirement that the purchaser who paid this freight for account of the shipper should return their receipted freight bills for credit. But as a matter of fact they were so unsuccessful in getting all their customers to do that that it was never enforced.

In the absence of that receipted freight bill they would not know of a diversion from the invoice itself.

Q. Wasn't that one of the reasons for not allowing prepayment so that they might not be able to divert?

A. No, sir. As I have said, the prepayment of freight would be a prevention of diversion.

Q. You spoke of this matter of the freight being paid to the railroad by the consignee for the account of the shipper. Does the shipper ever get any of that money that is paid to the railroad there if it is the exact amount of the freight?

A. No.

Mr. Wooden, what I am trying to say is that while we talk about f. o. b. destination sales, what we actually do is to ship freight allowed to destination.

Q. And that payment to the railroad of the freight for the account of the shipper, what does that mean, simply that you don't have any claim on that payment to the railroad; do you?

4070 The Witness: The only way I can answer that question is to say in my opinion our method of ship-

ment and invoices is invoicing at destination, freght allowed; in other words, that the customer is required to pay the freight even though we talk of an f. o. b. destination price.

By Mr. Wooden:

Q. He pays the freight directly to the railroad?

A. That is right.

Q. And he is allowed the amount of that freight off the face of the invoice, is that right?

A. That is right.

4071 Q. How about when you were with the Missouri? Was that the practice then?

A. As I remember, the same practice prevailed during that time of invoicing as I have described.

Q. Aren't you well enough acquainted with the general practice of the industry in that respect to say whether or not that is the general method of handling the invoices?

Mr. Leisure: I think the witness has answered that question. He has told what his own knowledge is. Now counsel wishes to go further and have him surmise and offer some conjectures what other companies may do. He has told what his personal knowledge is.

Examiner Norwood: Read the question.

(The question is read.)

Examiner Norwood: Objection overruled.

The Witness: No, I am not, Mr. Wooden.

By Mr. Wooden:

Q. Did not the Code require that method?

A. No, sir.

4072 Q. Mr. Reiter, are you familiar with the freight rate situation on cement in and around the so-called Gas Belt mills in Kansas?

A. In general I am, Mr. Wooden.

Q. Am I correct in understanding that in the so-called Gas Belt, there are a number of cement mills which after they get a certain distance out of that belt away from their mills, have a common freight rate to other destinations?

A. That is correct.

Q. Can you tell me what the distance is at which 4073 the common rate goes into effect?

A. It runs in my mind that it is a matter of some 50 miles.

Q. From what point or place?
A. That I do not know.
Q. Is it from Iola?
A. I am sorry, I cannot answer that.
Q. Do you know whether or not that within the distance or the limit, whatever it may be, whether the freights within that distance are different from the various mills to the various locations within the district?
A. They are.
Q. Has there been any organization to compile freight rates within that district as distinguished from the Institute service which I take it is outside the district?
A. No, Mr. Wooden. The Institute covers the rates inside as well as outside in their book.
Q. Has there been any local organization of the mills there to handle freight rates within the district?
A. So far as I know there has not, and I see no occasion for any.
Q. Is there a similar situation with regard to rates in the Lehigh Valley district?
A. Yes, the situation there is similar.
Q. Do you know what the distance is there at which point the common rates begin?
4074 A. I said that the situation was similar, but I do not believe it is exactly the same. There are variations in freight from a number of the mills within what is known as the Lehigh Valley, but whether those variations exist within a definite area, or whether that distance applies individually from each mill, I do not know.
Q. Has there been any local organization among the Lehigh Valley mills to handle freight rates within the Lehigh Valley district?
A. So far as I know there has not.
Q. Do the Institute freight rate books cover points within the Lehigh Valley district as well as without?
A. That, of course, would be contained in the Pennsylvania rate book, and I am not sure whether the present issue of the Pennsylvania rate book as issued by the Cement Institute does cover them or not.
Q. When I say "points" I mean destination points.
A. Well, you mean whether to any destination in the Lehigh Valley the different rates applicable from the various mills are given?
Q. Yes.

A. My answer to that is that I am not certain that the present Pennsylvania rate book does give those rates, but prior issues did give them in a supplement to that book, and I thought that was a very good method of han-
4075 dling, and before I left the Cement Institute I issued instructions that the next issue of the book should be made in that manner, and at the present time it is my impression that attention is called to those differences in freight in the Pennsylvania book as a footnote in the book.

Q. When I was asking you about points within the Gas Belt, I meant destination points. Does that call for any correction of your answer in view of that fact?

A. No, sir, because all rates are given to those points.

Q. At destination points within those districts like the Lehigh Valley and the Gas Belt, how are destination prices determined there? From what base?

A. My company uses their own base, their own mill in both cases in determining destination prices.

Q. Does your base within those districts—is that what you might say way the governing base in those districts?

A. Our mill in the gas belt is located at Independence, Kansas, and our mill in the Lehigh Valley is located at Northampton, Pennsylvania, and I do not know whether I can truthfully soy that those bases are considered the governing bases by others or not. I happen to know that the Lehigh Valley uses its own mill at Iola as a base in figuring its destination prices, or apparently they do, because they talk of an Iola maximium mill net.

Examiner Norwood: You mean both mills use the
4076 same base or each mill uses its own location as its base?

The Witness: I say that we use our own mills as our base, and it is my impression that the other companies use their own mills as their base.

4077 Examiner Norwood: They do that in competitive bidding, would they, or do they?

The Witness: I am more familiar with the Gas Belt than I am with the Lehigh Valley situation, your Honor.

Examiner Norwood: Yes.

The Witness: And they would do that in competitive bidding, and in addition would meet a lower price of a competitor, if one was quoted, which is true as I understand it of the so-called basing point system anywhere.

Examiner Norwood: Read that answer.

(The answer was read.)

By Mr. Wooden:

Q. How many mills are there in this so-called Gas Belt?

A. I would have to count them. (A pause:) I believe six, Mr. Wooden.

Q. How many are there in the so-called Lehigh Valley district?

A. I am afraid I can't count those.

Q. Give them approximately?

A. There are many more.

Q. Are there as many as twenty?

A. I think less than that. It runs in my mind fourteen, or something like that.

4078 Q. I am showing you papers marked for identification Exhibits 993-A to D, inclusive. Will you accept them as authentic photographic reproductions of correspondence passing between the Chicago Freight Bureau and the Ash Grove Lime & Portland Cement Company?

A. I so identify them, or accept them.

Mr. Wooden: I offer them in evidence.

Examiner Norwood: Is there any objection to those?

Mr. Zimmerman: I have not come to them yet.

Examiner Norwood: Let us have a five minutes recess.

(Whereupon a short recess was taken, after which the proceedings were resumed as follows:)

Examiner Norwood: Go ahead.

Mr. Wooden: Any objection? There is an offer of an exhibit pending.

Examiner Norwood: Any objection to that exhibit?

Mr. Leisure: Not as to identification.

Your Honor, I have read them carefully and I have been unable to see how they are material. I make that objection, that I do not see how they are relevant or material.

4079 (COM. EX. 993-A to D was offered and received in evidence.)

Q. Does this exhibit typify the method by which members informed the Freight Rate Bureau of discrepancies or corrections they thought ought to be made?

4080 Examiner Norwood: You can explain to what extent it is typical, if it is, and in what particulars.

(The question was read.)

A. Mr. Wooden, it is an instance where a traffic man-

ager called our attention to errors which he thought he found in one of our freight rate books.

By Mr. Wooden:

Q. And it was customary for traffic managers of various companies when they thought they had found an error or discrepancy somewhere in the freight rate publication of the Instiute to write about it and state what the proper or correct figure should be?

A. That was customary with many traffic managers. And, as the reply there indicates, our own traffic man then checked that from the tariffs.

Some of these tariffs require technical interpretations as to where the rate applies, and our own traffic
4081 men sent out only corrections which he himself discovered, or which were called to his attention, where he concluded that an error existed.

Q. And where the errors were corrected or a correction sheet sent out by the freight bureau, were they made effective immediately?

A. If there was an error, yes; if it was a notice of change in the rate, they were made effective as of the announced date of that change, of course.

Q. Is there a restriction upon the time in which increased rates may go into effect, that is, some regulation of the Interstate Commerce Commission or of the railroads themselves?

A. I cannot specifically answer that except to say you generally have due notice, say fifteen days or more of a change in the rates. However, there are instances where the tariffs are changed on what is commonly known as a 24-hour notice.

Q. Can that be done with an increase as well as a decrease?

A. Yes, sir.

Q. I was under the impression that there had to be even a 30-day notice in the case of an increase.

A. I think my information is correct.

Mr. Wooden: Your Honor, I want the record to show that I read for the record a paragraph in one letter.

Examiner Norwood: Yes.

4082 (Reading off the record.)

By Mr. Wooden:

Q. I show you, Mr. Reiter, a North Carolina rate book No. 3 of the Institute Bureau at Bethlehem, Pennsylvania, effective December 5, 1935. Will you examine that and see if there are any rates published in it from Fordwick, Virginia?

A. There are.

4085 Q. Does the North Carolina rate book that you have before you publish any rates for Martinsburg, West Virginia?

A. Have you got the point of origin there right?

Q. Martinsburg, West Virginia.

A. No, sir.

Q. Does it publish any from Superior, Ohio?

4086 Mr. Leisure: Are any of these freight rate books in the exhibits?

Mr. Wooden: No, not yet.

Mr. Leisure: The others will want to see the 4087 book if he is going to testify from it.

Examiner Norwood: Yes, the counsel may examine the book.

Mr. Zimmerman: Nobody has any objection to its going in, neither side.

Mr. Wooden: I have no objection; all right. I offer it in evidence.

Examiner Norwood: The freight rate book from which the witness is reading is received in evidence by agreement of counsel as Commission's Exhibit No. 994.

(COM. EX. 994 was offered and received in evidence).

Q. Now, the freight rate book for North Carolina which you have been referring to is numbered 994, and I believe I asked you whether there was any freight rate published from Superior, Ohio.

A. There is none.

Q. Is there any published in it from Manheim, West Virginia?

A. No, sir.

Q. Is there any published in it from York, Pennsylvania?

A. No.

Q. Is there any rate published in it from Hagerstown, Maryland?

4088 A. No, sir.

Q. Are there mills located at those points that I

have named, Martinsburg, Superior, Manheim, York and Hagerstown?

A. Martinsburg I believe is the correct mill town of the Standard Lime & Stone Company. Hagerstown is not the customary railroad point but there is a mill—Security is the railroad point of the mill which you say is called Hagerstown.

Q. What is that mill there? What is the name of the company?

A. The North American.

Q. The shipping point is what?

A. Security. Security is not shown. What were the other points?

Q. York, Pennsylvania.

A. Yes, that is a mill town.

Q. For what company?

A. Medusa Company.

Q. Manheim, West Virginia?

A. That is a mill point.

Q. For what company?

A. I am not sure.

Q. Is it Alpha?

A. It is Alpha, yes.

Q. Superior, Ohio?

4089 A. Of the Superior Cement Corporation.

Q. I believe you already mentioned Martinsburg?

A. That is right.

Q. Do you see what value that book would be to the mills located at those points if they want to quote in North Carolina?

A. Yes.

Q. What?

A. Well, the last one mentioned was Alpha, and this covers the rate from their closest mill freightwise or the closest mills freightwise. York, if my memory serves me correctly, moves on the same rate to this territory as any mill in the Lehigh Valley, and there must be one or more of those shown, and there may be reference marks to show that York among other moves on that same rate.

Q. How about Superior?

A. I am not sure about Superior except that I believe the rate from Superior is identical with that from Ironton, Ohio. They are very close together, located very close together.

Q. And is Ironton, Ohio, shown in the book?
A. Ironton is shown, yes, sir.
Q. How about Martinsburg, West Virginia?
A. Well, it is not shown and I do not see any particular service to that mill from this book.
4090 Q. What your answers mean there is that these mills could use these freight rates from the points shown in order to equalize the destination prices they might be quoting in North Carolina?
A. No. With that one exception I think they can determine actually their own freight rates from this book, or read it off.

I memember, Mr. Wooden, in answer to that, that the early book for some of the western States, where there were shipments from the Gas Belt, showed as a headline point, Iola, for instance, with a notation that all other mills, namely, in the Gas Belt, moved on that same rate.

Now, while I don't see a similar notation in this book, I presume in those three cases that I speak of that fact is known.

Q. Is what you say regarding North Carolina destinations true out of Virginia with reference to the usefulness of the rates shown to the mills that I have named?
A. I would have to see the Virginia book. I don't remember these books, which are quite a compilation, in sufficient detail to answer without it before me.
Q. Who determines what points shall be shown in the freight rate books that were published, what shipping point?
A. So far as those published by the Chicago freight rate bureau are concerned, I determined them, in
4091 consultation with the members of the industry.
Q. With traffic managers or with whom?
A. I generally corresponded with the president or vice president, and my letter was frequently referred to the traffic manager, and answered by him.
Q. Now, in so far as about the Bethlehem bureau, how was it handled there?
A. I don't know specifically, but undoubtedly some similar plan, or a plan that had the same effect.
Q. It is something that is peculiarly within the province of traffic managers, is it not, the question of what mill points should be shown as available for shipment into given territory?

A. Mr. Wooden, I wouldn't say so.

I had a measure of my own for that, which I thought was satisfactory, and I tried to have shown in all books as headline points, points of shipment from which any appreciable amount of cement went into the area covered by that book.

Q. Showing you papers marked 995-A and B for identification, will you identify them as authentic photographic reproductions of correspondence that passed between you and the Ash Grove Lime & Portland Cement Company in August, 1936? (Handing documents to the witness.)

A. (After examining documents.) Yes, sir.

4093 (COM. EX. 995-A and B was offered and received in evidence.)

Q. Mr. Reiter, referring to these Exhibits 995-A and B there was a case, was it not, where the correct rate from Louisville, Nebraska, to Blue Earth, Minnesota, was one-half a cent per hundred weight lower than the rate which he Institute freight rate book had carried?

A. Yes, sir.

Q. And one-half a cent per hundred weight would be how much per barrel?

4094 A. Usually 2 cents per barrel.

Q. So, then, if the shipper has used the correct freight rate to Blue Earth, Minnesota, he would have a destination price at Blue Earth of 2 cents a barrel less than the one that was used by using the freight rate book of the industry?

4095 A. That would be true only if the destination price at Blue Earth, Minnesota, was the sum of some so-called base prices at Louisville, Nebraska, plus the freight.

Q. That is right. That is where the freight was involved from Blue Earth to Louisville.

A. Usually an error of that kind is found immediately that a shipment is made, because it gets a further check then from the railroad.

Q. Of course, you do not know how long that error was in effect?

A. No. I am merely indicating that the debtors usually exist only to the time that a shipment is made because you get a further check from the railroad on that rate.

Q. There might have been quotations made, however, at Blue Earth without shipments being involved?

A. Yes, and those quotations may have been correct unless the destination price at Blue Earth, as I say, was made on a so-called base price at Louisville, Nebraska.

Examiner Norwood: What do you do in using that book when you want to quote prices to a point not named in the book?

The Witness: All station points are named in the book with certain minor exceptions where cement would not ordinarily move.

Examiner Norwood: If there were a case of a 4096 point not named in the book, then they would base the delivered price on the nearest point?

The Witness: No, sir. Then we would go to the tariff and get the rate from the tariff, but I don't want to emphasize the fact that all of these books contain substantially all of the station points in the area covered.

Examiner Norwood: In that case, though, where you would find that, a new figure would be furnished and that information would be given to the trade immediately?

The Witness: If we were asked for it, we would send it out on one of these correction sheets as an additional station as the rate to that station.

Examiner Norwood: And if one asked for it, you would get it up for him immediately and send it out to all of the others, is that correct?

The Witness: That had copies of that particular rate book.

Examiner Norwood: Would that be effective at once?

The Witness: Yes, sir, inasmuch as the rate was already in effect.

Examiner Norwood: It does not change any rate and it would go into effect at once?

The Witness: Yes.

4097 By Mr. Wooden:

Q. Is Louisville, Nebraska, a basing point?

A. I think that it is a so-called basing point which affects a very small area around it.

Q. Would it affect Blue Earth?

A. I don't know where Blue Earth is.

Q. Minnesota; I don't know where it is other than that.

A. I doubt it very much, because it is Minnesota.

Q. I show you papers marked 996-A and B for identification. Will you identify those as authentic reproductions

of correspondence between the Institute and the Ash Grove Lime & Cement Company in November, 1936?

A. Yes, sir.

4098 (COM. EX. 996-A and B was offered and received in evidence.)

4099 Q. In the case represented by Exhibit 996-A and B, the Institute agreed to a correction that showed the rate from Dallas to Black Bear, Oklahoma. The correct rate was 5 cents per hundredweight higher than the rate that had been carried in the publication, was it not?

A. That is right.

Q. And how much per barrel is 5 cents a hundredweight?

A. Approximately 20 cents. You understand, Mr. Wooden, that I can not answer your question exactly. It depends upon the converted rate.

Q. Is Dallas a basing point?

A. I am not sure.

Q. Under the facts to this case, if some shipper had quoted the correct rate of Black Bear from Dallas, he would have been nearly 20 cents a barrel higher than if he had quoted the rate in the Institute freight rate book, is that right?

4100 The Witness: That does not follow, Mr. Wooden.

By Mr. Wooden:

Q. Will you explain?

A. Unless the base if any at Dallas plus the proper freight rate would make the destination price at Black Bear—

Q. (Interrupting.) In that case however, then what?

A. Well, even in that case, my knowledge of that territory is such that I know our own base at Independence would overrun 20 cents.

Q. That would not have prevented him from making a quotation that might have been out of line, would it?

4102 The Witness: Well, I have lost the whole drift now. I don't know what it is.

By Mr. Wooden:

Q. You were speaking of the fact that your Independence base would have offset that 20 cents difference down there?

A. Yes.

Q. That led to my question that nevertheless a concern that was using the freight rate book of the Institute or had wanted to use the correct rate and knew what the correct rate was would be out of line with the concerns that did use the Institute book in quotations?

A. Under a given combination of circumstances which have been indicated here, he might have quoted as much as 20 cents higher than some of his competitors.

Q. At destination?

A. At destination.

Q. Showing you papers marked Exhibit 997-A to D, inclusive, are those samples of the correction sheets as they were sent out from time to time?

A. Yes, sir.

Mr. Wooden: I offer them for the record.

4103 Examiner Norwood: Any objection to that exhibit?

Mr. Leisure: No objection.

(COM. EX. 997-A to D was offered and received in evidence.)

Q. 997-A contains corrections for a number of stations in Nebraska effective October 15th. Then 997-B shows that that was cancelled effective at once. Is that correct? Indicating exhibit.)

A. Yes, sir, under date of October 14th.

Q. And notice given that the rates originally published from Superior to the same stations would remain in effect until further notice?

A. Yes, sir.

Q. And under date of November 4th—this is all 1935—effective at once were not the same rates that were cancelled put into effect from Superior to those stations?

A. Yes, sir. They undoubtedly reflected proposals in the tariffs which were not carried out and reinstated. In other words, this is not a change in opinion on the part of the Cement Institute, but a reflection of tariff information.

Q. I wanted to get your explanation.

Showing you papers 998-A and B for identification, will you, or can you identify them? I think they are from

4104 the files of the Bethlehem Bureau.

A. I cannot identify them, because I was not familiar with the Bethlehem files, but I have no doubt that they are copies of letters in those files.

Q. Did you receive from time to time copies of the cor-

respondence from the Bethlehem Bureau at Chicago for your information?

A. Copies of correspondence?

Q. Yes.

A. No. A short time after my office was moved to Washington, I required that copies of all letters that were written by the Bethlehem Bureau be sent to me, but that was the only time I saw letters written by that office.

Mr. Wooden: I do not know whether any further identification is required, but I will offer them, and if we have any difficulty, I think we can identify those papers as coming from the Bethlehem Bureau files.

Examiner Norwood: How many sheets?

Mr. Wooden: Two.

Mr. Leisure: No objection.

(COM. EX. 998-A and B was offered and received in evidence.)

Q. According to these exhibits, Mr. Reiter, rates 4105 were published in the Institute book from Jacksonville to southeastern points. Was there any mill at Jacksonville?

A. No, sir.

Q. From the standpoint of the domestic shipper, what was the advantage in having rates published from Jacksonville?

A. Jacksonville was a point of entry for foreign cement, which was actually a shipping point for foreign cement, or a potential shipping point.

Q. From the standpoint of shipping of domestic cement what service was involved in the publication of the rates from Jacksonville?

A. So far as I know no domestic cement moved from Jacksonville to other points. Is that the answer that you wanted?

Q. Yes. But a little further, then the service involving the publication of the rates from Jacksonville was not to the traffic movement of domestic cement?

A. That is right.

Q. Showing you now Exhibits 999-A and B for identification, can you identify those in the same way you did the last numbered exhibit? I think they are also from the Bethlehem Bureau's files. (Handing documents to witness.)

A. (After examining documents.) Yes, sir.

Mr. Wooden: I offer them in evidence.

Examiner Norwood: Any objection?

Mr. Leisure: No objection.

4106 (COM. EX. 999-A and B was offered and received in evidence.)

Mr. Leisure: May I ask the witness a question, Your Honor?

Examiner Norwood: Certainly.

By Mr. Leisure:

Q. Will you explain why, if for any reason, this should go into a freight rate book? (Indicating).

A. I remember this letter and reply at the time it was selected by a representative of the Federal Trade Commission, and it seemed unusual to me, and I made inquiry, and I have the explanation of the manager of the traffic bureau at Bethlehem.

Examiner Norwood: What part of the exhibit are you referring to there?

The Witness: This is a letter from the—

Examiner Norwood: (Interposing.) Is that 999-A?

The Witness: 999-A and B.

Examiner Norwood: 999-A and B. Go ahead.

The Witness: (Continuing.) He says that this destination which is referred to in these letters is not served by a railroad, and he got this unsolicited information as to

4107 a water rate to New Orleans, and even though the freight rate book covered railroad rates only, he sent it out as a correction sheet for such information as it may prove to be to members of the Cement Institute.

It was a very unusual case, and I have never seen another one like it.

4108 By Mr. Wooden:

Q. Mr. Reiter, referring to Exhibit 999-A and B, I believe you said that is the only instance you knew of where water transportation rates had been published in the rate books?

A. That rate was not published in the rate book. It was a—

Q. (Interposing.) A correction sheet?

A. (Continuing.) A correction sheet was furnished to interested members, gratuitous information that was sent to the freight rate bureau at Bethlehem, and it reflected itself in no rate in the rate books.

Q. You say furnished to interested members. How was it determined which members were interested?

A. All of those who had rate books for the State.

Q. Of Louisiana?

A. Of Louisiana, I believe.

Q. Is the Lone Star mill at New Orleans the only mill there?

4109 A. It is the only mill at New Orleans.

Q. Is it a basing point mill?

A. Yes, sir.

Q. For the purpose of shipping as distinguished from the matter of determining destination prices the New Orleans mill was the only one that was interested in that rate from New Orleans, was it not?

A. I am not sure, Mr. Wooden. In the past I believe that there have been some shipments of cement to New Orleans for trans-shipment.

Q. How long in the past?

A. I remember some discussion of that matter within the last year, but I don't know whether it actually resulted in a trans-shipment or not.

Q. If any mill competing with the Lone Star Cement Company mill at New Orleans had found a cheaper water transportation rate than the one named there to this same point it would have been to the disadvantage of the Lone Star to have its rate known, wouldn't it?

A. That would all depend, Mr. Wooden, whether this rate was used as an item in the distance cost or destination price at that destination, and that I don't know.

Q. Do I understand now that no water rates have been published in the freight rate books?

A. I am sure that is true.

4110 Q. And is it also true that no rates by any other method of transportation than rail have been published?

A. That is right.

Q. Why is that the water rates have not been published?

A. As I have said some time earlier in the past month there is no filed list of tariff rates on such transportation.

Q. Does the same reason apply to the non-publication of truck rates?

A. Yes, sir. So far as I know there is no filed tariff for trucking rates.

Q. I am showing you the Virginia rate book No. 4 of the

Institute; dated July 10, 1935, effective July 10, 1935, marked Exhibit 1000 for identification.

If there is no objection I would just like to waive and go through without the formality of identification, and I would like to offer it so that I may refer to it.

Mr. Leisure: No objection.

(COM. EX. 1000 was offered and received in evidence.)

Q. (Continuing) Does that Virginia rate book No. 4 show any rates from the Medusa plant at York, Pennsylvania?

A. No, sir.

Q. Does it show any from the North American 4111 plant at Hagerstown or Security?

A. No, sir.

Q. Any from the Standard Lime & Stone Company of Martinsburg, West Virginia?

A. No, sir.

Q. Any from the Superior Portland Cement Company of Superior, Ohio?

A. No, sir.

Q. What service to the mills at those places is represented by the publication of rates from points other than the points where they have mills?

A. I doubt if from some of these mill poins any appreciable amount of cement moves into Virginia.

And, again, there are headline points shown in this book, which so far as my knowledge goes, may be known to have the same freight rate to Virginia destinations as some of those shipping points you mentioned.

Q. Just how sure are you that those points would carry the same freight rates?

A. I am not entirely sure.

Q. This morning, in the case of North Carolina, you expressed the opinion the rates were approximately the same, I believe. I wanted to see how sure you were of that.

A. If they were only approximately the same, they would not be of the value I had in mind.

4112 And, as I say, I am not sure, but ordinarily York, Pennsylvania, to distant destinations does to my knowledge carry the same rate as Northampton, Pennsylvania, which is shown here, and the rate from Ironton to distant destinations is the same as the rate from Superior, Ohio.

Q. Exactly the same?

A. Yes, sir.

Q. Unless the rates are exactly the same, they would be of no value from the standpoint of shipping?

A. That is correct.

Q. But only from the standpoint of reaching a destination price?

A. If that is the way the destination price was figured, yes, sir.

Q. You mean by that last statement if they use the publication information in the book to figure the destination price when you say that is the way they are handled?

A. Yes. And the same so-called base price at the shipping point from which they use the freight rate.

4113 Q. You said something this morning about giving instructions to include in the rate books at the Chicago Bureau all shipping points from which any appreciable amount of cement was shipped, is that correct?

A. Yes, sir.

Q. When did you issue those instructions?

A. That has been a progressive matter, Mr. Wooden, and was in my mind from the start of that service in 1930, and the various issues of these freight rate books will show an increasing number of headline points until that object was accomplished.

Q. The instructions that you issued, when were those given?

Mr. Leisure: There is no testimony about instructions which were issued, to the best of my knowledge.

Examiner Norwood: Were instructions issued?

The Witness: No written instructions. I made it plain to the manager of the Chicago Freight Rate Bureau what my desires were in the matter.

By Mr. Wooden:

Q. Did you give similar information to the Bethlehem Bureau?

A. I did when it came under my direct jurisdiction.

Q. Had you found the practice in the Bethlehem Bureau somewhat different from Chicago at the time you took it over?

A. I would say it was substantially the same, but 4114 that the rate books issued at Bethlehem for various States varied in that respect somewhat one from the other.

Q. You said something this morning, I believe, about your having had correspondence with officials of various companies with regard to deciding where shipping points should be included in the freight rate books.

A. Both correspondence and conversation with such officials on that subject.

Q. Did you have discussions at meetings about such matters?

A. I don't recollect that we did.

Q. Showing you papers marked Exhibit 1001-A, B and C, can you identify them as authentic copies from the files of the Bethlehem Freight Bureau?

A. While as I said this morning I am not familiar with letters in the Bethlehem Bureau files, I have no doubt that those are photostatic copies of such letters.

Q. Were the selections made from the Bethlehem Bureau files by agents of the Commission gone over by you?

A. I saw them later, yes, sir.

Q. Are you willing to concede that those are a portion of those papers which you then saw?

A. Yes.

Q. Referring to Exhibit 1001-B, there is a considerable amount of pencil notation and calculations at the bottom of the page. Are those Mr. Riegart's?

4115 A. I am not familiar with his handwriting. I might be familiar with his signature, but I do not recognize this handwriting.

Q. The handwriting on 1001-A, do you recognize any of that, in the margin?

A. No, sir.

Q. While you are at it, do you recognize the handwriting in the margin of 1001-C?

A. No, sir.

Mr. Wooden: I will offer the documents with the exclusion of the handwritten notes.

Examiner Norwood: Is there any objection to those papers?

Mr. Leisure: No, sir.

(COM. EX. 1001-A, B and C was offered and received in evidence.)

Q. Directing your attention to the handwriting on Exhibit 1001-B, are those abbreviations of the various shipping points?

A. Yes, sir. At least those that I can read here (indicating are).

Q. Will you name as many shipping points as you can?

4116 A. The first one in Tampa, then Jacksonville, Birmingham, Leeds, Ragland—

Q. (Interrupting) Will you go back and state in each case whether there is a mill located at the particular point that you name?

A. Tampa, there is a mill.

Q. That is the Florida Portland Cement Company?

A. That is right. Jacksonville, there is no mill; Birmingham there are two mills, inasmuch as he has a third one generally located at Birmingham separately specified here.

Q. He; who is "he"?

A. Whoever wrote this stuff. That would be Alpha and Lone Star. At Leeds, Alabama, would be the Universal Atlas Mill. The next four points I can not interpret from this abbreviation. The next is Rocky Ford, Georgia, where there is a mill.

Q. What is the name of it?

A. Southern States. The next one I can read here is Chattanooga, where there is the mill of the Signal Mountain Company. The next one which I can read is Kingsport, Tennessee, a mill of the Penn-Dixie Company. The next one is Knoxville, the mill of Volunteer. That is all I can read on here, Mr. Wooden.

4117 Q. Which of those you can decipher are basing points?

A. Tampa, Jacksonville, Birmingham, Leeds, and Kingsport, I believe.

Mr. Leisure: I am not clear, your Honor, on that as to whether they are basing points. I am not sure. Whether Mr. Wooden included in his question recognizing them as basing points. I did not hear that named.

Mr. Wooden: No. I am just asking him which ones were.

By Mr. Wooden:

Q. Showing you papers 1002-A and B for identification, will you identify those in the same way as you did the previous ones as photographic copies of correspondents from the files of the Bethlehem Bureau? (Handing documents to the witness.)

A. (After examining documents) I will accept them as such.

Mr. Wooden: I offer them in evidence.

Mr. Leisure: May I ask the witness a question on the exhibit?

Examiner Norwood: Very well.

By Mr. Leisure:

Q. Mr. Reitet, Mr. Wooden's question was whether you accepted these as something. Did you mean by that that you recognized this letter signed "Manager," without a name to it? Do you mean by that that you know who wrote the letter 1002-B?

4118 A. No. I do not know who wrote the letter, but I am assuming from the covering letter, to which that appears to be a reply, that the manager was Mr. Reigert, the manager of the Bethlehem Bureau.

Q. When you say you accept it, it does not mean you know anything about the correspondence, does it?

A. I do not, Mr. Leisure.

By Mr. Wooden:

Q. Was that among the correspondence that you saw after it was selected by a representative of the Commission?

A. I have no memory of it at all, Mr. Wooden.

Examiner Norwood: You sent the first letter, you mailed the first letter to the addressee, and in due course of the mails you received that reply?

Mr. Wooden: No, he did not.

The Witness: No, sir, I was not a party myself to this correspondence.

Mr. Leisure: It is clearly not identified, but we make no objection.

(COM. EX. 1002-A and B was offered and received in evidence.)

Q. Your manager of the Bethlehem Bureau was C. H. Reigert, is that right?

4119 A. That is right.

Q. Now, showing you papers 1003-A to D, inclusive, they are photographic copies of correspondence purporting to have passed between the Bethlehem Bureau of the Institute and a couple of cement companies. Would you accept them as authentic documents?

A. Again, Mr. Wooden, while I have no memory of this

correspondence, it appears to be photostatic copies of correspondence with the Bethlehem freight rate bureau.

Q. I notice 1003-D indicates a copy was sent to you. Was that your practice at that time?

A. At this time, yes, sir.

Q. Do you know the marginal handwriting on 1003-A and 1003-C (indicating)?

A. (After examining documents.) No, sir.

4121 (COM. EX. 1003-A, B, C and D was offered and received as evidence.)

Q. Referring to Exhibit 1003-C, can you make out 4122 the writing at the botom of it there? There are a number of shipping points there, are there not?

A. Yes, these seem to be abbreviations of certain shipping points.

Q. Will you state what they are?

A. The first is Northampton, Pennsylvania, Universal; Pennsylvania, Unionbridge, Fordwick, Norfolk, Ironton, Kingsport, Richard City, Chattanooga, Birmingham. The last one I can not make out.

Q. Are all of those basing points, and if not indicate which ones are?

A. I do not believe that I recognize Chattanooga as a basing point.

Q. But all the others you do?

A. Yes, sir.

Q. Showing you two papers marked Exhibit 1004-A and B for identification, purporting to be photographic copy of a letter and a telegram addressed to the Bethlehem Bureau of the Institute, will you identify those in the same way as far as you can, as you did the others?

Mr. Leisure: Your Honor, I am not clear about this last question. With respect to the basing points, it seems 4123 to me that it would be better to ask him if he knows anything about the correspondence rather than if he can identify them as he did something else. Either he knows about the exhibits or he does not. That is the shortest way.

Examiner Norwood: Let him answer if he knows.

The Witness: I have no memory of this correspondence.

4124 Mr. Leisure: Let us see if we can save some time. May I ask a question?

Examiner Norwood: Yes; go ahead.

By Mr. Leisure:

Q. Mr. Reiter, I show you Exhibits 1004-A and 1004-B, purporting to be photostats, marked for identification, and ask you if you have ever seen them, and if so, when, where and under what circumstances?

A. So far as I know I have not seen them before.

Mr. Leisure: I have no objection to the exhibits.

(COM. EX. 1004-A and B was offered and received in evidence.)

Q. Now, 1004-A refers to a correction sheet showing a rate from Savannah, Georgia. Was there any mill at Savannah?

A. No, sir.

Q. Can you say why rates should be shown from a place where there was no mill?

A. Because Savannah is an actual or a potential shipping point for import cement.

4125 Q. And the publication of a rate from Savannah would serve no shipping purpose for any domestic mill?

A. So far I as know, no.

Q. Is that also true of Panama City, Florida?

A. Yes, sir.

Q. The same as to the import of cement there?

A. Yes, sir.

Q. Mr. Reiter, have the rate books included rates from points such as Wilmington, North Carolina, and Charleston, South Carolina?

A. Yes, sir.

Q. Are those in the same category as Jacksonville and Savannah in every respect that you have already testified about?

4126 A. Yes, sir.

Q. There are no mills in either North or South Carolina, are there, no cement mills?

A. No, there are not.

Q. Have any rates been published from other points of entry like Philadelphia or New York City or Boston?

A. As I said some time ago, there are no commodity rates on cement out of New York City, and I can now add out of Boston. I think the same is true of Philadelphia, but I am not sure about that.

Q. Is that your explanation of why rates have not been published from those ports of entry for foreign cement?

A. Yes, sir. A complete rate book should, and I think the Cement Institute do include all commodity freight rates on cement. If there was a point that had rates from it, those rates should be included.

Q. Is there a mill located at Philadelphia?

A. No, there are mills located near Philadelphia, the nearest one being Valley Forge, which has a shipping point, I believe, of Conshohocken.

Q. Where is the National Cement Company of Pennsylvania located?

A. The National Portland Cement Company?

Q. Yes.

A. At Broad Head.

4127 Q. Is that near Philadelphia?

A. Well, it is not the nearest mill to Philadelphia. It is in the Lehigh Valley.

Mr. Wooden: Your Honor, at this time I want to offer for the record exhibit previously identified by Mr. Millwee and numbered 145 for identification. It is a photographic copy of a letter from the Diamond Portland Cement Company to Mr. Blaine S. Smith dated October 14, 1929, and relates to the subject of trucking.

Examiner Norwood: Is there any objection?

Mr. Zimmerman: Yes there is, but I would like to read it first, however, before I state my objection.

Examiner Norwood: Yes, go ahead.

Mr. Zimmerman: My objection is that it is entirely too remote to anything that has anything to do with the issues of the case. It is a letter written back in 1929.

(COM. EX. 145 was offered and received in evidence.)

4128 A. The most active section for trucking that I know of is the southern peninsula of Michigan.

Q. How do you account for that?

A. I don't know how to account for it, Mr. Wooden.

Mr. Leisure: Before we get to that question I would like to have the time specified in the last question, because I do not think the record shows when.

Examiner Norwood: I think he will come to that.

The Witness: I mean at the present time the southern peninsula of Michigan is the most active for trucking in my opinion.

By Mr. Wooden:

Q. Has it always been one of the most active sections for the use of trucking?

A. I don't know as I can exactly answer that question. I will say that it is more active now than it was some time back, just a few years back.

Q. Does the fact that Michigan is the center of the automobile industry have anything to do with that in your opinion?

A. I think not.

Q. Can you give any explanation as to why Michigan, the southern peninsula of Michigan, has been so active in the matter of trucking?

4129 Examiner Norwood: Answer that from your own knowledge. The objection is overruled.

A. From my own knowledge I do not know.

There were some trucking conditions of prices filed with the Code Authority pretty generally through southern Michigan, and that is the only knowledge I have of them, Mr. Wooden.

By Mr. Wooden:

Q. How was it back there in the early days of the
4130 Institute back there in Chicago when you were in charge there? Was Michigan then more active than other sections in the use of trucking?

A. That would not reach my attention until there was open price filing, and would not reach my attention in any other connection I had with the cement industry until that with the Code Authority.

Q. What other sections of the country can you name where trucking has been more actively engaged in than in the general run of the business?

A. Answering also from my Code Authority experience, California was very active in filing prices delivered by truck. I would say at that time almost equally with Southern Michigan. And those are the two most active places for trucking that I recolleet.

Q. Hasn't there been some trucking problem around other places in the Great Lakes region, like say in Toledo, or Cleveland, and Buffalo?

A. There is trucking around each of those three cities that you mentioned.

Q. Are there some sections where trucking has never been engaged in?

A. Yes, that is true.

Q. What are those sections?

4131 A. They would be large areas of the country, Mr. Wooden.

Q. Can you give us a general idea of where those areas are?

Mr. Leisure: I think we ought to have the time specified and whether or not the witness is giving us hearsay evidence, or his own knowledge.

Mr. Wooden: He is saying never. I guess that ought to cover the time.

Mr. Leisure: That does not cover it satisfactorily though.

Examiner Norwood: I think we will get to that.

The Witness: May I make it plain?

By Mr. Wooden:

Q. Oh, yes.

A. That in these answers I am basing my answers on the code period and subsequent information which I have.

Q. All right.

A. I recollect no filing of truck prices in the Southeast, except in a portion of Florida, from Miami north along the Atlantic seaboard. That is quite a wide area.

Q. Yes.

A. I recollect no trucking conditions filed with the Code Authority in the entire State of Texas.

Q. And that is a wide area.

A. Yes. Mr. Wooden, this is a difficult assignment, because the areas where there were no trucking condi-

4132 tions filed are quite large. And even the areas where they were filed are considerable in number, and I am afraid it is beyond my memory.

Q. I don't expect you to be exhaustive about it. What about the Lehigh Valley district? Was trucking actively engaged in there?

A. At the present time it is not, and I recollect no trucking conditions filed in the Lehigh Valley during the code period.

Q. Was there a time prior to that when trucking was engaged in the Lehigh Valley?

A. I have no direct knowledge of that, Mr. Wooden; I am not sure.

Q. How about the Hudson Valley mills? Was trucking engaged in there during your connection with the Code Authority and subsequently?

A. No, sir.

Q. What about the area in western Pennsylvania and Ohio?

A. No trucking conditions filed in western Pennsylvania. There were some filed around Cleveland and around Toledo, Ohio.

Q. How about central and southern Ohio?

A. I believe there were none filed there.

Q. Moving out farther in the Middle West, was trucking engaged in, on cement in Indiana and Illinois?

A. Trucking? Now, I will have to ask you a question.

4133 Q. All right.

A. Do you mean delivered to trucks at mills, or packing plants, or actually delivered by the cement company as a part of their price?

Q. I would say the former.

A. That is delivered by the cement company?

Q. No.

A. Delivered to trucks?

Q. Yes.

A. That condition was filed at the Chicago packing plants, and at Buffington, Indiana, mill of the Universal Company. What other State now besides that is there?

Q. Indiana and Illinois. You might take that territory in there, even a little farther west.

A. I think there were no conditions of trucking filed for Indiana.

Going north from Illinois there were trucking conditions filed at Milwaukee, Green Bay, and at a point or points in the upper peninsula of Michigan.

4134 Q. What about the territory around Iowa, Nebraska, Kansas and Missouri?

A. Well, there were trucking conditions filed at Duluth, Minnesota, none in Iowa, none in Missouri—I am wrong about Missouri. There was for a time a trucking condition of delivery filed at Cape Girardeau, Missouri. I recollect no trucking conditions filed in Kansas and—what was the other State?

Q. Kansas and Missouri, and I mentioned Iowa and Nebraska in that same connection.

A. I have answered for all of those except Nebraska, and I recollect no such filing in Nebraska.

Q. How about Oklahoma and Arkansas?

A. I recollect no filing for either of those States.

Q. How about the Mountain States?

A. There was a trucking condition or delivery to trucks filed by the Three Forks Company at Trident, Montana, and their other mill in Montana whose location for the time I do not remember.

Q. Any trucking conditions filed in the Pacific Northwest? Washington, Oregon or Idaho?

A. I do not recollect any. By the way, I would like to correct one statement. I told you I recollected no filing in Texas. There was a filing of delivery to trucks at El Paso, Texas.

4135 Q. On this other point of delivery by trucks of the mill, that is something of a rarity, isn't it, to have the mill own its own trucks and make delivery by them?

A. I would say that that is rare but it is quite common for the cement company to hire its own truck for delivery of their product.

Q. Is that common in the areas where the trucking conditions were not filed as you referred to them?

A. Where the trucking conditions were not filed?

Q. Yes.

A. I am afraid I do not understand your question.

Q. You have given us a number of conditions where trucking conditions were filed under the Code. Now, in the other areas, did the companies deliver their own cement by truck through contracts with truckers?

A. No, sir, I have tried to include those areas where cement companies did deliver cement through the hired trucks.

Q. Did the development of truck transportation complicate somewhat the industry's problem of calculating destination prices in terms of rail freight?

A. No, I don't think it did.

Q. When I refer to the trucking problem, I think you will agree with me that it has been a problem, hasn't it, for the industry?

A. Well, personally I consider it a problem.

4136 Q. Was it a problem of increasing difficulty over a period of time?

A. Well, the industry has had that feature in it for some years now, Mr. Wooden.

Q. That feature of it?

A. I mean they have had to deal with the possibility of trucking or the actual trucking, for some years, and reach their decisions as to what they would do about deliveries to trucks or by trucks.

Q. Has the difficulty of the problem increased as the years have gone by?

Mr. Leisure: Your Honor, I have difficulty in following these questions—I am trying to—as to what facts are being elicited from the witness. I think both the words "difficulty" and "problem" are words susceptible of many interpretations, and I think if counsel would make them clear as to the facts that he would like to bring out, it would be very much better for the record.

Examiner Norwood: You can say that about almost any word.

Mr. Leisure: "Problem" would cover the whole range of facts dealing with trucking. I do not see how the witness can give a fair answer which involves the whole field. The word "difficulty" also. If he has in mind specific things, I should think that they should be brought
4137 out.

Examiner Norwood: If you will give counsel a chance, may be he will bring those out. Objection overruled; read the question.

(The question is read.)

The Witness: I would say no.

Examiner Norwood: Why is it a problem?

The Witness: Well, I can only give you my own opinion, your Honor.

Examiner Norwood: Go ahead.

The Witness: The majority of cement sold by any cement company goes through dealers and is resold by dealers.

By Mr. Wooden:

Q. Is that true since the depression; since the government purchases have been so large?

A. Yes, I think it is still true. These dealers are interested in the price of cement at their own destination and the delivery of cement at their own destination. By delivery to trucks at a mill or by delivery to destination by trucks other than those owned or hired by the cement company, the cement company is very apt to show discrimina-

tion as between customers and be penalized for it by their principal customers, which are the dealers.

Q. You mean that the dealers who took delivery
4138 by truck would have an advantage over the dealer who took delivery by rail?

A. That may or may not be true. May I illustrate?

Q. It is true in some cases, isn't it?

Mr. Leisure: He can only answer one question at a time, Mr. Wooden.

The Witness: Yes, I think that would be true in some cases. Now, if I may illustrate—when I was with the Missouri Company they had a dealer at St. Charles, Missouri, who was right on the line of the back haul of empty stock trucks which went loaded into St. Louis, and these stock trucks would pick up cement, and it happened to be our brand of cement, at this dealer in St. Charles, and hauled it back into the interior of Missouri at a very low rate, because otherwise they would go back empty, and inasmuch as the price at St. Charles, Missouri was lower than the interior points in Missouri, every place that our brand of cement hit, the dealer that we had at tha point would threaten if we did not correct the situation, he would quit buying our brand of cement. That condition exists in many places.

By Mr. Wooden:

Q. And the dealers in the same territory handling other brands of cement would also be affected, wouldn't they?

A. Well, it just happened in this case the dealer
4139 handling our brand of cement was better situated for these truckers being on the main route, than any other dealer handling another brand of cement.

Examiner Norwood: That would enable the dealer that introduced that economy in transportation to undersell the other dealers, and that is why they did not like it, isn't that it?

4140 The Witness: As a matter of fact this trucker would not deliver to these other dealers at these interior points, but take an order from the customer.

By Mr. Wooden:

Q. Direct to the job?

A. Direct to the job.

Q. Just adding insult to injury, so to speak?

A. Not, I think you can readily understand that that is a very serious thing to a cement company, to have their dealers over a wide area threaten to deprive them of their business.

Q. Now, again, my question of other dealers in that sort of a territory handling other brands of cement would they not be affected also, were not they affected by the fact that your cement was being sold by some dealers at a reduced price?

4141 A. Further, with that example, a truck might deliver to a customer at an interior point, say five sacks of our brand of cement, and we might lose a dealer who would normally buy from us several carloads a year, and to that extent the other dealers and the other brands of cement which they handled would gain by our loss.

By Mr. Wooden:

Q. Either that or the price on the other brands would have to come down to meet the price where the dealer was shipping your cement in there?

A. Yes; but in the quantity of which I speak that wouldn't happen.

Q. Wasn't there a reflection of this situation among the dealers, wasn't there a reflection back upon the conditions of competition among the manufacturers?

A. I am afraid I don't understand.

Q. Wasn't there pressure upon the manufacturers to reduce their prices in order to enable the dealers to compete with the cement that was being delivered by trucks?

A. I don't know what you would describe as pressure, but the dealers rather expressed their dissatisfaction with allowing trucking of that nature, and expressed themselves as preferring that no trucking would be allowed by the cement company.

4143 Q. Have you been present at meetings at which the manufacturers discussed the effect upon their prices to the dealers of cement in this situation that you have been illustrating?

A. I have not.

Q. Why couldn't you have solved your difficulty there in Missouri and in cases like that by allowing dealers to take delivery by truck?

A. The dealers quite evidently didn't feel that that would solve their difficulty. They preferred delivery by

rail, rather than delivery by truck, for the reasons indicated in this example.

Q. Did you have other cases where your dealer customers wished delivery by truck?

A. I don't remember of any instances where customers requested truck delivery at that time.

Q. How has it been with the Universal Atlas Com-
4144 pany since you have been with them? Have you had any dealer-customers who wished truck delivery?

A. In some places, and do get it.

Q. Where are such places?

A. We deliver to trucks at our mill at Duluth and at our mill at Buffington, Indiana.

Q. Have you a truck into Michigan, lower Michigan?

A. And we deliver by hired trucks into the lower Peninsula of Michigan, or that part of it which we reach.

Q. When you sell and deliver by truck in those cases do you figure on a destination price?

A. No, sir. We have a price f. o. b. our mill loaded on truck.

Q. Is that price loaded on trucks the same as your price delivered by rail?

A. At Duluth the price f. o. b. truck is the same as our so-called base price at the mill, and at Buffington, Indiana, it is 15 cents higher than our so-called base price at Buffington, 15 cents a barrel.

Examiner Norwood: That is the same as the mill net on delivered shipments?

The Witness: Yes, sir, at Duluth.

Examiner Norwood: On rail deliveries?

The Witness: Yes, sir.

By Mr. Wooden:

4145 Q. Do you allow dealers or purchasers to take delivery at your mill or mills in trucks on those conditions, and take the cement to any place they like?

A. No. In each case—well, in the case of Buffington deliveries are to dealers' trucks for destinations in and around the City of Chicago only, and to no destinations in Indiana.

At Duluth there is a restriction in area, but substantially it is within the area of the City of Duluth and its environs.

4146 Examiner Norwood: Do you have a competitive mill at Duluth?

The Witness: We have a competitive packing plant there to which cement is brought by boat from its mill.

By Mr. Wooden:

Q. That is the packing plant of the Huron Company?

A. That is right.

Q. I show you a paper marked 1005 for identification, photographic copy of a letter from the Wabash Company to you as manager of the Institute at Chicago, July 24, 1930, from the files of the Wabash Company. Will you identify it as an authentic communication or copy of an authentic communication?

A. I do not remember that letter at all.

Q. Even though it is addressed to you?

A. Even though it is addressed to me. It is dated some eight years ago.

Mr. Wooden: This was produced by Mr. MacIntyre from the files of Mr. Jennings of the Wabash Company. If you wish it further identified—I will leave that to you.

Mr. Leisure: Does this "H. F. J." refer to Mr. Jennings, the writer of the letter?

Mr. Wooden: Yes.

By Mr. Wooden:

Q. There is an H. F. Jennings, is there?

4147 A. Yes.

Q. And he was connected with the Wabash Company?

A. He is secretary of the Wabash Company.

Examiner Norwood: Is there any objection?

Mr. Leisure: No objection.

(COM. EX. 1005 was offered and received in evidence.)

Q. Can you explain, Mr. Reiter, why there is this reference to a truck base at the Stroh plant of the Wabash Company as of the time of that letter in 1930?

A. I have no recollection of this at all, and I cannot conceive of any idea why he was writing me about a truck base. In running over it in my mind just now, I thought possibly that I may in connection with the freight rate bureau have written him as to whether he was interested in the freight rates being shown from Stroh, Indiana, which is not his most modern and largest plant.

Q. But it is a plant?

A. There is a plant at Stroh.

Q. Were freight rates shown from Stroh in the later publications?

A. I am not sure. As a matter of fact, I think I remember at this time that he was trucking from his
4148 mill at Stroh and was not particularly interested therefore in the freight rates being shown out of Stroh.

Q. I am showing you papers marked for identification Exhibit 1006-A to F inclusive. They purport to be photographic copies of communications passing between the Code Authority and various cement mills relating to trucking. Will you identify them as being authentic reproductions of such correspondence?

A. Yes, sir.

Mr. Wooden: I offer them in evidence.

Examiner Norwood: They will be received as marked subject to any motions which may be made tomorrow morning.

(COM. EX. 1006-A to F was offered and received in evidence.)

4149 Washington, D. C., March 11, 1938.

4150 GEORGE H. REITER resumed the stand and testified further as follows:

Direct Examination (Continued)

Mr. Wooden: I believe, your Honor, at the close of the hearing last night Exhibit 1006-A to F was offered.

Examiner Norwood: Exhibit 1006-A to F was received. I think there was some more being marked.

Mr. Wooden: 1006-A to F was offered.

Examiner Norwood: They have been presented, have they not? I think so.

Q. Now, are there any objections?

Mr. Wooden: I believe they were being examined at the time we adjourned.

(Discussion off the record.)

Examiner Norwood: They were received.

Mr. Wooden: They were received subject to a motion to strike this morning.

Examiner Norwood: Subject to further objection
4151 if any should be made.

Mr. Leisure: They have to do with the Code period, your Honor, I believe, do they not, Mr. Wooden?

Mr. Wooden: Yes.

Mr. Leisure: So we just reserve our objection on the Code material.

Examiner Norwood: Yes. They have been received already.

Q. In 1006-A, Mr. Reiter, the letter of yours—I will say it is the letter of Mr. Rader—to Mr. Letzkus, sales manager of the Pittsburgh Plate Glass Company, reference is made to his letter of January 22, regarding trucking conditions in Lucas and Cuyahoga counties, Ohio.

Mr. Wooden: I should like to call for the production of that letter of January 22, 1934. It is not in our hands, unless it may be among the material coming in in response to subpoena.

Mr. Leisure: What is the date of the letter, Mr. Wooden?

Mr. Wooden: January 22, 1934.

Mr. Leisure: And from whom?

Mr. Wooden: From Mr. L. C. Letzkus to the Code Authority.

The Witness: I doubt if that letter is available.

4152 Mr. McFadden: Was that copy subpoenaed of the Pittsburgh Plate Glass Company?

Mr. Wooden: I do not know whether it was or not.

Mr. Leisure: If we have it you can have it.

By Mr. Wooden:

Q. You say you doubt if it is available. Why is that, Mr. Reiter?

A. Because it probably was among the Code Authority, or I mean it is not available from that end of the correspondence.

Q. Yes.

A. Because it probably is among the Code Authority correspondence, which was not retained.

Q. It is possible that the files of Mr. Letzkus might contain a copy?

A. Yes, of course.

Q. Can you say what the trucking conditions in Lucas and Cuyahoga counties, Ohio, were that are referred to here?

A. I don't believe I can, except that I remember that Mr. Letzkus was not favorable to trucking in those two counties which are respectively the counties in which Cleveland and Toledo are located.

Q. Cuyahoga is Cleveland, I believe?

A. Yes.

Q. Who or what concerns in those two markets were most active in engaging in trucking?

4153 A. I can tell you several concerns which were engaged in trucking in those markets, but I don't know which was the most active.

Q. All right; tell us those who were engaged in it?

A. Huron in both Toledo and Cleveland, Aetna in Cleveland, Medusa in both Cleveland and Toledo, Universal at Cleveland, and Lehigh at Cleveland, and there may be others.

4154 By Mr. Wooden:

Q. Have there been some concerns that were, you might say, proponents and defenders of the use of trucks while others were opposed to it?

A. Well, I presume that is so.

Q. Did that difference of opinion and attitude on the subject have its origin in part in whether or not the ones that favored it found advantages in it, while those who opposed it found disadvantages to themselves in it?

A. I would not say, Mr. Wooden.

Q. The subject, I gather from Exhibit 1006-B, was discussed at various meetings. What meetings were those?

A. Well, this refers to meetings of the Code Authority and I told you yesterday that I was not present at any meetings where that was discussed. Of course many commercial matters were discussed at meetings of the Code Authority and I was present at those meetings.

Q. Were there meetings of the various mill representatives in the sections where trucking was being carried on?

A. Not so far as I know, Mr. Wooden.

Q. Did the Code Authority provide for the report of trucking conditions including the prices delivered to trucks in the same way that it handled the reporting and filing of prices delivered by rail?

A. Yes, sir.

4155 Q. That included, I take it, the notification of each concern of what the trucking conditions and prices of the others on file were?

A. Yes, sir.

Q. And as long as the Trade Practice Committee was functioning, was the trucking filing handled in the same way as the filing of the rail delivered prices?

A. Yes, sir.

Q. I notice, according to Exhibit 1006-C and 1006-F, that the Huron Company and Universal Atlas Company each reported that its prices delivered to customers by truck were the same as their destination prices by rail. Is that a correct interpretation of those two exhibits, with the qualification that one was reporting for lower Michigan and the other for the Milwaukee area?

A. As a partial answer, that is true for the Huron filing for Milwaukee. This filing of the Universal Company for lower Michigan, under date of May 24, is something different.

Q. What is the difference?

A. Let me say, first, that the filing of the Huron Company for Milwaukee says that the prices of cement in Milwaukee and vicinity delivered by truck in 30-barrel minimum quantities to the dealer's warehouse would be the same as their carload prices.

1006-F is the filing from the Universal Company, 4156 under date of May 24, applying to the price f. o. b. customer's trucks at their Muskegon, Michigan, warehouse, which they say "are the same as our f. o. b. delivered prices at customer's destinations in lower Michigan as now filed with the Code Authority."

Q. Does not that latter mean customers' f. o. b. destination prices by rail?

A. Yes, but the point of delivery is the customer's trucks f. o. b. the company's warehouse, whereas the filing of the Huron Company in Milwaukee is delivery f. o. b. customer's warehouse.

Q. Within the area specified around Milwaukee?

A. Yes, sir.

Examiner Norwood: That made those two prices out of line, did it not?

The Witness: They were in two different sections of the country also, Your Honor.

By Mr. Wooden:

Q. Were the filings of the other companies applicable to lower Michigan on the trucking conditions and prices substantially the same as the Universal?

A. May I hear that question again?

(The reporter read the question.)

A. I do not recollect specifically.

Q. Were the filings of other companies for the
4157 trucking in the Milwaukee area similar to that of the Huron Company as expressed in 1006-C?

A. I remember that they were.

Q. Did you ever see a map that showed the area in which the trucking conditions applied around Milwaukee?

A. I may have, Mr. Wooden. I do not remember.

Q. Were there certain areas around cities like Cleveland and Toledo within which trucking conditions applied as there were in the case of Milwaukee?

A. Well, that area wherein filer's trucking conditions applied, was a part of his filing and varied according to his idea. In this case I recognize the area named as the City of Milwaukee and some adjacent suburbs.

In the case of Cleveland the area was described by counties and both of them were changed, to my knowledge, during the code period, as to area.

Q. How about Toledo? Was that area around Toledo indicated by counties, or what was the situation?

A. I think it was indicated by counties.

Q. Was there an area around Detroit that was also indicated by counties?

A. I don't remember that filing, Mr. Wooden.

Q. How about Buffalo? Was there an area around Buffalo that was indicated by counties?

A. Yes, I think that was indicated by counties.

4158 Q. Showing you a paper marked 1007-A and B for identification, will you identify it as an authentic photographic reproduction of a letter passing between you and Mr. Charles Luck, of the Peerless Cement Corporation, dated May 3, 1934? (Handing document to witness.)

A. (After examining document.) Yes, sir, I so identify it.

Mr. Wooden: I offer it in evidence.

Examiner Norwood: Any objection?

Mr. Leisure: The same objection, under the Code.

(COM. EX. 1007-A and B was offered and received in evidence.)

Q. Did you have some difficulty in getting the company to file its trucking prices and conditions in a satisfactory form?

A. I don't remember specifically, but if the Aetna Company or any other company did not file prices and

terms that were in the opinion of the Code Authority entirely definite—

Q. (Interposing.) Entirely what?

A. Entirely definite, we would have communicated with them and not accepted such a filing until it was definite.

Q. Did that matter of definiteness include the territory to which the trucking conditions applied?

A. Yes, indeed.

4159 Q. And the applicable prices and terms within that territory?

A. Yes, sir. I am speaking about filings under the open price system, you understand, as prescribed by the Code.

Q. Yes. I am showing you papers marked 1008-A to I, inclusive, and will ask you if you recognize them as correspodnece that passed between you and the Aetna Company with regard to the matter of truck filing? (Handing documents to the witness.)

A. (After examining documents.) Yes, sir.

(COM. EX. 1008-A to I was offered and received in evidence.)

4160 Q. I notice in Exhibit 1008-C you ask Mr. Cree to specify the territory more specifically or more accurately than he had in his previous filings for trucking, asking whether it was for the State of Michigan only, or territory in addition to the State of Michigan. Were you able to get a definite filing as to the territory?

A. After considerable effort we got a filing which we considered to be sufficiently specific for our needs, as that correspondence indicates.

Now, the last, or one of the last exhibits there shows a specific filing, but I don't believe it is related to these early papers. However, it is an example of truck filing which we would consider specific under the code provisions.

Q. You raised some question, did you not, as to whether the truck filing of the Aetna Company involved a reservation of the right to deliver to the site of the job?

A. Yes, sir.

Q. Were you able to get any definite report from

4161 the Aetna Company about that particular point?

A. Undoubtedly we were, or we would not have accepted the filing. I doubt if that is a complete file of the correspondence which passed.

Q. Was this ruling of the Code Authority about having or allowing loaded trailers to remain on the job, was that a case involving a complaint against Aetna?

1162 A. No, even having my memory refreshed by this, I think as in the first instance where we wrote the same letter to two other companies that we wrote to Aetna that this practice grew up among several companies, and for that reason we addressed all companies who were doing business in that territory and asked for their practice in that regard.

Q. Is the territory in Wisconsin that is described in Exhibit 1008-I—is that in the vicinity of Milwaukee or is that in other Wisconsin sections?

A. I am sorry I do not recognize the locations of those counties from the names.

Q. I am showing you papers marked 1009-A to D, inclusive, for identification. Will you identify them as photographic copies of an exchange of correspondence between the Code Authority and several California companies and also a letter to the Deputy Administrator of the N. R. A.?

A. Yes, sir.

Mr. Wooden: I offer them in evidence.

Examiner Norwood: Is there any objection?

Mr. Leisure: This is a series of correspondence between the parties designated. The first letter appears to be that of the Code Authority to the president of Calaveras, which is a respondent. That is 1009-A. Our only objection to that is that it comes in the code period.

4163 We have our objection to that and I will not restate it.

As to the rest of the correspondence—1009-B, 1009-C and 1009-D—1009-B and C are communications between the Code Authority and a company which is not a respondent, and just let me give you an example of why we think we should not be bound by statements of third parties.

Examiner Norwood: Go ahead.

Mr. Leisure: Here is a man who writes a letter to the Code Authority and says:

"Please be advised that we earnestly disapprove of trucking from cement mills, as you can not have fair competition in competition with brokendown trucks as against the railroads. Furthermore, the railroads of the

country need the business, but we have only followed our competitors and are ready to quit trucking at any time they do."

Clearly, in a litigated matter, the respondents in this case should not be bound by what his action is or what his opinions are in such a letter, and it seems to me this shows clearly the impropriety of admitting in evidence letters between third parties when they are objected to.

The same objection applies to 1009-C because it is a reply, I take it, to this letter. I believe it is a tele-
4164 gram—a radiogram—by the Chairman of the Code Authority to the same company, which is not a respondent.

Now, as to 1009-D, that is a letter passing between Barton W. Murray, Deputy Administrator of the N. I. R. A., and the Chairman of the Code Authority, neither of which are respondents in this case and neither of whom would have any authority to bind any of these respondents no matter what they thought or what they wrote.

Mr. Wooden: It is one side of a chain of correspondence between the Code Authority and a member of the industry relating to matters in which both were engaged and that particular matter happened to be one of the subjects with which this complaint is concerned. The Code Authority not being anything other than the Cement Institute, I think, has been shown, I think, in the record —that it was set up by the Cement Institute.

Examiner Norwood: I think this may be admitted to show the method employed by the Code Authority, but will not be received as any evidence of conspiracy on the part of any of these respondents. Its use will be limited.

The objection is overruled and it is received as marked.

4165 (COM. EX. 1009-A to D was offered and received in evidence.)

Q. Mr. Reiter, was there later on a discontinuance of trucking in the locality covered by these Exhibits 1009-A to D?

A. No. I think trucking was extended in that territory.

Q. Did the Code Authority and subsequently the Trade Practice Committee interest themselves in correcting the situation which was complained about with regard to trucking in that locality?

A. That is only part of the correspondence on that particular subject, but it indicates that a complaint was filed, because the two companies named there had not filed conditions of trucking which they were indulging in.

4166 And the Code Authority's only concern was in having specific conditions filed, which they actually were observing. And I presume, therefore, knowing that the trucking was extended in that area, that later the trucking conditions were properly filed.

Q. Did the Code Authority in that case first take the position that the filing had been properly done and then change its position later?

A. Not as indicated by those letters.

Q. No; I am not asking on that point.

A. Well, I don't recollect.

Q. I see.

A. I don't think so, but I don't recollect the details.

Q. Referring to Exhibit 1009-D it appears from that, as I understand it, that several companies filed prices f.o.b. Kentucky House.

A. Yes, sir; I read that.

Q. Was that the mill point of the Calaveras Company?

A. That is right.

Q. Any other mill there?

A. No, not at Kentucky House.

Q. That is a case then where prices were filed f.o.b. the mill of another company, as distinguished from destination prices?

A. May I look at those again? (Examining papers.)

4167 I assume this situation, Mr. Wooden: That while Kentucky House is the mill point of the Calaveras Company there is also a town there, and a filing f.o.b. Kentucky House is not necessarily a filing f.o.b. mill.

It would be, of course, very unusual for another cement company to file f.o.b. mill of a competing company. I wouldn't understand that.

Q. That has been done, though, hasn't it, or, rather, I should say basing point prices have been established in that way at times, haven't they?

A. Not so far as I know.

Examiner Norwood: May I see that exhibit?

(The exhibit was handed to the Examiner.)

By Mr. Wooden:

Q. Was Kentucky House a basing point?

A. I can't answer that either.

Examiner Norwood: I will state for the record that the limitation in the receipt of this Commission's Exhibit 1009 does not apply to the first one, 1009-A, but applies to the remaining sheets.

By Mr. Wooden:

Q. I show you, Mr. Reiter, papers marked for
4168 identification Exhibits 278-A to F, inclusive, with the exception of D, correspondence, or copies of correspondence passing between the Code Authority and a member of the Code Authority, the Yosemite Portland Cement Company, and Mr. Neylan. Do you recognize or remember that correspondence (handing documents to to the witness)?

4169 A. Mr. Wooden, these are again, copies of letters, but I have some memory of the matter concerned and have no reason to doubt those are correct copies.

Q. These papers were identified on a previous occasion by Mr. Widman as coming from the files of Mr. Neylan. Mr. Neylan was a member of the Code Authority and later of the Trade Practice Committee?

A. That is right.

Mr. Wooden: I offer these in evidence.

4170 (COM. EX. 278-A, B, C, E, and F was offered and received in evidence.)

Q. Now, Mr. Reiter, I will ask again a question I asked when I showed you the papers—whether or not the Code Authority changed its position with regard to the acceptability of the truck filings of the Calaveras Company about that time?

A. That illustrates a case where I, as chairman of the Code Authority at that time, accepted a filing by the Calaveras Company and my acceptance of such filing was challenged by a member of the industry, whereupon I referred the whole facts to the membership of the Code Authority for their advice and they disagreed with me and the filing was rejected by the instructions of the Code Authority membership. May I add that those instances were quite rare?

Q. I notice in 278-B, your letter to the members of

the Code Authority, that you stated that "A member of the Code Authority feels that this filing should be rejected inasmuch as that while it specifies fully the terms and conditions of sale at destination delivery allowance is made to dealer when deducted results in a carload price other than that filed with the Code Authority." Can you say what member of the Code Authority it was that took that position?

4171 A. No, I do not remember.

Q. Was it a member of the Code Authority from the West Coast?

A. I don't remember, Mr. Wooden.

Q. What was the danger that you referred to in Exhibit 278-A that the filing, even though it complied with the code, might be dangerous?

A. So far as my memory permits me to answer, I believe that this filing by the Calaveras Company was made as virtual protest to other filings of which they were notified by competitor and delivery by truck.

They did not propose to actually make delivery themselves by truck, but in order to meet that competition would make an allowance from their carload price. And I am not clear in my mind whether it was a definite allowance, or just a statement that they would allow the actual cost of trucking. I believe it was the latter.

Now, the commercial danger, as I saw it, was that the next move on the part of their competitors might well be a meeting of their adjusted price with a truck delivery quotation, and a continuation of this allowance by Calaveras, and progressively they would go where they told me they had been before, to selling cement well below the cost of their production.

Q. That is what I take it Mr. Neylan, you under-

4172 stood Mr. Neylan to mean, when he referred to the earmarks of the situation becoming chaotic?

A. I would imagine that is what he had in mind.

Q. I notice the Yosemite Portland Cement Company, in writing you on June 10, 1935, interpreted your letter as meaning that such filing would have been an infraction of the Code, in that it destroyed all semblance of fixed destination prices, and that led, or would have led to the chaotic conditions that you referred to?

A. That was merely their opinion of our decision. The decision of the Code Authority was still based on having a definite filing of price terms.

Examiner Norwood: What is that last sentence there, a definite filing of what?

(The reporter read as requested.)

By Mr. Wooden:

Q. That is an illustration, isn't it, Mr. Wooden, of how trucking, the use of trucking might have a deleterious effect upon the destination prices quoted on an all-rail delivery basis?

A. That is one illustration.

I very frankly say that in my opinion mill prices, f.o.b. rails, necessarily made in carload lots, are not competitive with truck prices made in less quantities, f.o.b. job site, or f.o.b. dealer's warehouse.

4173 Q. When you said a while ago that trucking was extended in California areas served by Calaveras and others, did you mean that the area was extended in which trucking was indulged in, or that the price conditions resulting from it increased in severity?

A. I mean that the area was extended.

In California there are a group of plants located in and around San Francisco, and another group located around Los Angeles, and because of the Tehachapi mountain range in there, they normally do not ship from one area to another. Therefore, the original filing was in one or the other of those areas and was prepared for all over the State of California.

Q. Is that your understanding of the present situation?

A. I am not up to date on the situation in California; I don't know what it is.

Q. What is the last time of which you can speak?

A. It was really prior to the end of the Code, because the members on the Pacific Coast had quit filing prices before the end of the Code.

These exhibits, however, were right at the end of the Code, and some of them ran over into the possible code period in June, 1935.

A. Yes, sir. However, the filing was in the code period.

Mr. Zimmerman: May I ask, Mr. Wooden, what 4174 would be the termination of the code period?

Mr. Wooden: I do not know that I can answer you offhand. I do not know whether I ever could answer you.

Mr. Zimmerman: I had in mind that there was a pronouncement of the President relating to codes and the termination thereof.

Mr. Wooden: This is off the record.

(Discussion off the record.)

Mr. Wooden: The only thing I have in mind was a statement put out immediately following the Schechter decision, by Mr. Richberg.

Mr. Zimmerman: To what effect? I do not believe that that is what I had in mind.

Mr. Wooden: I think in general it expressed a hope for the continuation of the codes as a voluntary arrangement in various industries, particularly with regard to wages and hours.

Mr. Leisure: There was something by the President also.

4175 Q. I show you a paper marked 1010 for identification. Will you identify it as a photographic copy of a filing relating to trucking at Oswego, New York, and a notification thereof to interested members of the industry?

A. Yes, sir.

Mr. Wooden: I offer that in evidence.

Examiner Norwood: Is there any objection?

Mr. Leisure. We have the objection that it is code material.

4176 (COM. EX. 1010 was offered and received in evidence.)

Q. What is the plant at Oswego, New York, referred to here?

A. It is a packing plant of the Huron Company.

Q. What are the nearest mills to it?

A. I can hardly answer that without a map. There are quite a few mills up in New York.

Q. Is there a mill at Buffalo?

A. Yes.

Q. Whose mill is that?

A. Well, there are two—the Federal Cement Company and the Great Lakes Company, which manufactures Lehigh Cement. There is a mill at Jamestown which is close in there and one at Portland Point. I do not know which would be the closest.

Q. Were these mills you just referred to engaged in trucking also?

A. I have already said that there was trucking at Buffalo and this was the filing of a trucking condition in a new area.

Q. Did the Buffalo area and the Oswego area overlap so far as trucking deliveries were concerned?

A. No, they do not.

Q. Are there mills at Glenn Falls and Howes
4177 Caves, New York?

A. Yes.

Q. What mills are those?

A. At Glenns Falls, the Glenns Falls Portland Cement Company and at Howes Cave, I believe, is a mill of the North American Company.

Q. Did they engage in trucking?

A. I do not believe so.

Q. Did the area served by trucking from the Oswego plant of the Huron Company overlap with the territory served by mills at Glenns Falls and Howes Cave?

A. As this heading here shows, the companies to whom this announcement was sent, we thought it possible that any of these companies would be interested in this area and there are, I would say, 30 companies named here.

Q. Prior to this filing by Huron, quoting a five-cent premium on prices for truck deliveries, had they been selling for truck deliveries at the same price as for carload delivery?

A. If my memory serves me correctly they had not been selling for truck delivery. They had been selling for carload delivery only.

Q. Do you know whether or not any representations were made to Huron that it should impose a premium on its trucking out of the Oswego plant?

4178 Mr. Leisure: Representations by whom?

Mr. Wooden: Make it by anyone.

Mr. Leisure: Then I object to it; "by anyone" would not be binding on these respondents.

Examiner Norwood: I think counsel for the Commission should be a little more specific, if he can.

Mr. Wooden: All right.

By Mr. Wooden:

Q. I will ask you if you knew of any representations made by representatives of any competitors of the Huron Company that it should put a premium on its price for truck delivery out of the Oswego plant?

A. I know of none.

Mr. Wooden: I should like to ask for the production, at this time, of the letter of June 6, 1935, from the Code Authority to the Yosemite Portland Cement Company that is referred to in Exhibit 278-E.

Mr. Leisure: What is the date of the letter, Mr. Wooden?

Mr. Wooden: June 6, 1935.

By Mr. Wooden:

Q. Showing you a paper marked Exhibit 1011 for identification, do you recognize it as a photographic copy of a letter written by you to the addressee?

A. Yes, sir.

4179 Mr. Wooden: I offer it in evidence.

Mr. Leisure: Other than the fact it is under the code, we have no objection.

(COM. EX. 1011 was offered and received in evidence.)

Q. Do you remember what the conditions were reported by the Dewey Portland Cement Company as in trucking that is referred to in this exhibit?

A. I do not, Mr. Wooden.

Q. Do you remember what particular section of the country their trucking situation referred to?

A. No, sir. I know the locations of their plants, but they ship quite widely from these two plants so that it is not—that does not allow me to answer, either.

Q. Was one plant at Kansas City?

A. At Dewey, Oklahoma.

Q. Any at Kansas City?

A. No; the other plant is at Glenwood, Iowa, which is right at Davenport.

4180 Q. Do you recall whether or not trucking was a matter of interest or difficulty at that time in either of those areas about their mills?

A. So far as I could remember, there was no trucking filed in either the vicinity of either of those plants.

Mr. Wooden: I would like to ask for the production, if possible, of a letter of April 16, 1934, to which Exhibit 1011 is a reply.

Mr. Leisure: 1934?

Mr. Wooden: Yes.

By Mr. Wooden:

Q. Showing you papers marked Exhibit 1012-A and B for identification, do you recognize that correspondence

as having taken place between you and the Verady Trucking Company? (Handing document to witness.)

A. (After examining document.) Yes, sir.

Q. Did you have any other cases that you recall of complaints by any trucking interests?

A. No, I recall none.

Mr. Wooden: I now offer this in evidence.

Examiner Norwood: Received as marked.

4185 Examiner Norwood: I ordered that received thinking that there was no objection; consequently,
4186 that will be annulled and, for the time being, the documents marked 1012-A and B are not received.

4187 Q. Mr. Reiter, speaking of the code period when prices were filed for delivery to trucks and prices also filed for delivery by rail to destination did you consider it feasible to have a lower price filed by truck at a given destination than by rail to the same destination?

A. No; I would rather say, Mr. Wooden, if the rail shipper was attempting to equalize his price f. o. b. rail to a price f. o. b. truck that the price f. o. b. rail should be lower.

Q. You mean that he would have to lower the rail price to meet the truck price, is that what you mean?

A. In figures he would have to be lower f. o. b. rail than the price f. o. b. truck.

Examiner Norwood: You mean his mill realization would have been lower, is that what you mean?

The Witness: No, sir; I am talking about the
4188 destination prices.

Examiner Norwood: Are not the truck rates cheaper than the rail rates?

The Witness: I can't answer that specifically. It depends upon the length of truck haul.

By Mr. Wooden:

Q. Did you have in mind in your last answer that advantage that the trucks would have in delivering to the job site?

A. Yes, sir, I had that in mind, and also the smaller quantity which would make a load.

Q. Then if the truck filed price at a given destination were lower than the rail filed price at the same destination what sort of a situation would that create?

A. I believe that in that situation, unless other factors

entered in, which you and I have not considered now, that the truck deliveries would get all the business.

Q. Does that account for the practice in Michigan and in the Milwaukee area of having the filed rail price, or the filed truck price the same as the filed rail price?

A. No, that does not account for that.

In a city like Milwaukee rail delivery would be as satisfactory to many customers as truck delivery.

But, as a matter of fact, I think I can say from my experience that in Milwaukee cement delivered by truck is the majority of the cement used in that city.

4189 Examiner Norwood: In some of these mills that file prices they show that the delivery at the factory to the truck was higher than the mill realization on shipments by rail?

The Witness: Yes, sir. And such delivery would be an advantage to the buyer only because of the quantity involved.

The possibility of one movement, namely, from the mill to the job, and the comparative cost of getting the cement from the mill to the job as against from the railroad car to the job.

Examiner Norwood: Can you give us some of those differences?

The Witness: I gave one this morning, or yesterday from Buffington, Indiana, where the price f. o. b. truck loaded on truck was 15 cents higher than the so-called base price at that mill.

Others I talked about were the cement loaded on truck or loaded on car at the mill.

Examiner Norwood: I see.

By Mr. Wooden:

Q. Would that 15-cent addition that you speak of have the effect of reducing the amount of truck delivery?

A. I don't know. I presume it has the effect of reducing the amount of truck delivery and increasing the

4190 amount of car delivery.

Mr. Wooden: That is the proportion?

The Witness: Yes; that is right.

Mr. Leisure: I do not think the witness finished his answer to your Honor's question. He said "others." I do not know whether he meant other companies or destinations. I think that might be cleared up.

The Witness: What I meant was that in addition to

stating higher prices at one mill f. o. b. cars, I also mentioned another mill of the company I am with now that the price f. o. b. trucks was the same as f. o. b. cars. That was Duluth.

Examiner Norwood: You did receive complaints at various times from the truck people against the additional charge?

The Witness: The one that was brought into evidence this morning is the one—

Mr. Zimmerman: (Interposing) There was not any brought in this morning. I move that that be stricken out. I do not think that is a proper answer.

Examiner Norwood: He has not said anything about that yet. Do you know anything personally about that incident?

The Witness: No, sir, I do not.

Examiner Norwood: Then, do not tell us about it.

4191 Mr. Leisure: As I understand the answer to your Honor's question, he gave two instances involving Universal. The two instances that he gave, as I understood, are two instances concerning the Universal Company.

By Mr. Wooden:

Q. As I understood you a moment ago, truck delivery gave certain benefits to the mill in giving it a higher mill net and also a greater convenience to the buyer in having delivery made direct to the job site?

Mr. Leisure: That is so general I do not see how the witness can answer. I think he has indicated by his answer that the conditions were very different in different parts of the country and it is very easy to understand that a general question of that kind could not be answered specifically.

Examiner Norwood: Read the question.

(The question is read.)

The Witness: Mr. Wooden, that was not the tenor of my remarks.

By Mr. Wooden:

Q. All right; I want you to correct me if necessary. Is it true—what I stated in my question?

A. In a case where the higher price is charged at a mill f. o. b. trucks than f. o. b. cars and the added cost of

loading on the trucks is less than that charged,
4192 then, the cement company would have an advantage.

Then I would say that if the customers hauled cement away from that mill by trucks at the price quoted, it would follow that it must be an advantage to the customer.

Q. If the customer hauled the cement away and was charged his destination price, figured on the rail basis, would not the amount of that rail freight calculation then be added to the mill net relaziation?

A. Yes, in that case it would provided his destination price again was based on that mill.

Mr. Zimmerman: If the Examiner please, I submit we have gone far enough in the field of speculation now. This is not applicable to any facts or circumstances as to any particular mill or group of mills or any practice under the Code or after the Code. This is the field of speculation as to what might happen under this condition or that condition.

Examiner Norwood: I think it is based on what has happened.

Mr. Zimmerman: I say I have not objected so far, but I shall if it is persisted in.

Examiner Norwood: I think we are keeping that within bounds.

Mr. Zimmerman: I think we are asking too much of this witness to ask him to speculate in that fashion.
4193 I have no objection to his stating any facts that he knows.

Mr. Wooden: It is already in the record that, in some cases, the filed price for delivery to trucks was the same as the destination price for delivery by rail.

Mr. Zimmrman: That is where a truck would come from a certain point?

Mr. Wooden: Yes.

Mr. Zimmerman: They would sell at the price where the truck came from?

Mr. Wooden: Yes—the destination rail price.

Mr. Zimmerman: That is correct, but that does not justify having this witness speculate as to what would happen in some other case.

Mr. Wooden: My question is based on that state of facts.

(Discussion off the record.)

By Mr. Wooden:

Q. Mr. Reiter, passing to another subject now, will you give us a brief but compresensive description of the activities of the Institute in the checking of specific job contracts?

Mr. Zimmerman: Now, as to what period of time, if you please?

Mr. Wooden: I would like to make it as compre-
4194 hensive as possible, so as to show the whole life of the Institute, as far as he is able to do so. That is only eight years.

4195 Mr. Wooden: I can restate it.

Examiner Norwood: All right.

By Mr. Wooden:

Q. I asked him to give a brief and comprehensive description of the activities of the Institute in regard to the checking of specific job contracts.

Examiner Norwood: That is during your experience with the Institute.

A. The filing of specific job contracts and the reporting of them began in the Chicago division at least with February 1, 1930, and continued to the end of that year,
4196 when I left, and I believe two or three months longer,

It was started again August 1, 1933, and continued until about October 1, 1936.

And as to those times the practice was substantially the same, and it was substantially the same in other divisions of the Cement Institute.

So, if it is satisfactory I will testify as to what we did in the Chicago division, with which I am most familiar.

Examiner Norwood: Go ahead.

By Mr. Wooden:

Q. All right.

A. Upon forms provided by the Cement Institute all members reported closed contracts for the future delivery of Portland cement daily to the Cement Institute.

And after once having reported these contracts, on other forms provided they reported changes in the contracts, such as completion, increases in amount, decreases in amount, and so forth, the summary of this information so furnished daily by members of the industry was sent out on a form which was mimeographed in the Cement Institute office to all members in that division.

The information furnished on this form regarding these contracts included the date of the contract, the quantity required, the expiration date of the contract, the name of the buyer, and if a dealer the name of the contractor
4197 and a description of the work, but not the price at which this contract was sold.

Examiner Norwood: But not what?

The Witness: The price at which the contract was sold.

We had in the Chicago division a varying number of field engineers, who furnished in substance the information which the manufacturers filed with us, went out in the field and actually checked these contracts to find out, first, whether they actually existed, and whether the contract required the amount of cement for which it was covered by contract.

These field reports of the engineers were sent to the Cement Institute, and a corresponding report made to the member of the industry who owned that contract, giving him the essence of the information collected by our field engineers.

A member of the industry could inquire on a form provided regarding the status of a competitor's contract which he found listed on the daily sheet. And in that case after the field check we sent him a copy of the same report that was made to the member owning the contract.

Once a month we made a comprehensive report of all live contracts in our files, which stated the original
4198 quantity of cement, covered the amount already shipped, and which information we got from the members themselves once a month, and the unfilled commitments listed each contract separately, and summarizing the information on the first sheet of this rather large report.

We compiled certain statistics from this information, such as the various uses of cement covered by these contracts, and the percentage of the whole.

I believe, Mr. Wooden, that gives you a pretty complete picture.

By Mr. Wooden:

Q. Now, was there any filing or checking of contracts other than your specific job contracts?

A. For this purpose we call them all specific job contracts, but there were also requirements contracts, such as the requirements of products plants, and so forth.

Those were the only other contracts which were closed by cement companies.

Q. Were they checked in the same way as the specific job contracts?

A. Yes, sir. They were somewhat more diffcult to check because an estimate was required by some one.

We were satisfied with the estimate of our engineers, and others had different estimates.

4199 Q. Sometimes were those general requirements contracts held by dealers who also had specific job contracts?

A. Yes, sir. Now, you mean were they sold through dealers, or was the user the dealer himself?

Q. I meant the latter.

A. Yes, sometimes that was true.

Q. Were there some cases of concrete block producers, for instance, who were also dealers in cement?

A. Yes, sir.

Q. There would be a difficulty in knowing or finding out whether the cement was for use in the making of concrete blocks, for instance, or for resale as cement? Wouldn't that be true?

A. Yes. My field engineers were under instructions to solicit no information from dealers, except in such a case where there was no one else to go to, except that our man could get certain definite information.

He knew block plants, and how much they could produce.

He would walk out in their plant and by seeing certain machinery at least he knew the maximum cement that they could use in that plant, and seeing their stock of blocks, and talking to them about orders he could make a fairly accurate estimate even in that case of cement which would be used.

Q. The checking of specific job contracts, was that done wholly through information obtained or solicited

4200 from the buyer of the cement?

A. We checked specific job contracts through the contractor, the architect, the engineer and the owner, or two or more of them.

Q. Did you find any number of locations that specific job contracts were duplicated, that is that several mills, or more than one mill had contracts for the same specific job?

A. Indeed we did.

Q. Were a number of such contracts cancelled?

A. They were of course, having been over-bought, cancelled. But I want to make it plain that in all of this work I don't know of any case where the buyer was not left with sufficient cement to cover the work which he had under contract.

But where a buyer had bought the total quantity from three or four different cement companies quite frequently three of the four companies cancelled their contract, or the total amount at any rate was reduced to the total requirement.

Q. Upon a report showing the situation as the result of your checking?

A. Yes, sir, I assume so.

Q. How was it determined which one should do the cancelling?

A. Mr. Wooden, we had some amusing instances,
4201 where that condition existed.

We will say four cement companies had the total requirements of a certain contract through a dealer, and the representatives of each of those four cement companies went to this dealer and said, "Well, now, we happened to know that you have got this cement bought elsewhere as well as with us, and we don't want you to kid us, we have to know what our commitments are, and so will you tell us whether you intended to ship this cement from us or not?"

4202 And to each of those four representatives of different companies this buyer would say, "Well, that is true, I have got it bought from three other companies, but I am going to cancel theirs and take yours."

But when a representative of the Cement Institute, who was a neutral party, and had no sales interest in the problem, asked the same question, the buyer had to tell him something that indicated where he was going to buy his cement, that is, unless he refused to tell him anything.

Q. Did you have some difficulty in the way of refusals on the part of buyers to give your inspectors information?

A. Very rarely. We tried to teach diplomacy to our field engineers and instructed them to tell the buyer in each case who they were and why they were checking the contracts. The buyers believed that it was a business-like matter and rarely objected to giving information to our inspectors.

Q. And what was the interest of the buyer in having his contracts for specific jobs duplicated in that way?

A. Sometimes the buyer was friendly to several different cemnt salesmen and it was merely a friendly gesture. He did not want to turn anybody down on his order. In other cases, it cost him nothing to do this, and if the dealer —if the price of cement should happen to go up he would secure cement at a low price to which he was not entitled by virtue of his contract which he could supply on
4203 other work than that covered by the contract.

Q. Were these contracts so-called, something in the nature of an option to purchase or what was their status in that respect? Could one side enforce them against the other or what?

A. To the best of my knowledge, Mr. Wooden, they are a legal contract. They are in the nature of an option to purchase because, first, the include a guarantee against decline clause; that is, the named price in the contract follows a declining marked but does not follow an increasing market.

So far as I know, those contracts could be enforced at law. The purchaser could be made to take the cement for which he had signed, and I am informed that some years ago a company actually sued a buyer to perform under such a contract but if that were done, that buyer would never buy any more cement from the cement company.

Q. Suppose that were the case when the market declines?

A. No, because the contract price would follow a declining market and, as a matter of fact, the cement companies make no effort to force delivery under these contracts because by so doing, they lose customers. So that it amounts to an option.

Q. Did you, from time to time, in the course of your contract checking, advise the members that there was not any legal obligation to supply the cement under some
4204 of these specific job contracts?

A. No, sir; our reports indicated what facts we developed in the field and our members knew, without our telling them, and our reports were written in a form which indicated that we were furnishing them this information for what value it might be to them. Sometimes they followed by requesting information that we knew of which we furnished, and sometimes they did not.

Q. You indicated a moment ago in case of an advance in the market, the dealer if he had some of these dupli-

cated contracts and took all of the cement called for by them, would then be in a position to undersell other dealers who bought on the higher market price?

A. He would either be in a position to do that or else make a higher profit than his competitive dealers.

Q. What was the reason that the mills were not willing to sell all the cement any dealer wanted at the prices in effect at the time the specific job contracts were entered into?

A. Well, I cannot say what was in the minds of the various cement companies. It has been, for many years, the practice, however, to make deliveries of spot business without contracts for a period of fifteen days from the date of sale and to make no deliveries at that price beyond fifteen days, unless delivery was covered by contract.

Q. If a dealer buy unlimited quantities at a given
4205 market, then, in the case of any advance in price, he would have a speculative profit there?

The Witness: It seems obvious that he would.

By Mr. Wooden:

Q. And to the extent the dealer had a speculative profit, the manufacturer would be deprived of any speculative profit that he had in cement in storage and unsold?

4207 Mr. Wooden: I am willing to have the witness state now what he meant by his reference to following a declining market.

The Witness: I mean that a price per barrel appears in the contract for cement to be used on a specific job and at no time during the life of that contract, by its provisions, will cement cost the buyer any more than that, but if the seller's market price becomes lower than the figure named in the contract, the seller agrees, by the terms of the contract, to furnish the buyer under the contract cement at his market price during the time it is lower than the figure which appears in the contract.

By Mr. Wooden:

Q. Was there not some time limitation connected with that?

A. Each contract has an expiration date which is, I think, almost universally extended if the specific job for which cement is being furnished is not completed at the estimated expiration date appearing on the contract.

Q. Is the guarantee against declining price in the industry extended, in the industry, to ordinary sales without regard to specific job contracts—sales for stock purposes, et cetera?

A. No, Mr. Wooden, but referring again to the code period, we talked the other day of a guarantee against
4208 decline for a period of five days, as provided in the code.

Q. Now, you spoke of checking general requirements contracts, such as the cement block manufacturers. Were there other classes of customers that fell into that category?

A. Well, I believe that products plant requirements were all. There might be any other product besides blocks, and there are many.

Q. What are some of the other products?

A. Silo staves, cement asbestos shingles—oh, a variety of minor uses. Those are probably the principal ones—and sewer pipe, et cetera.

Q. Are some of those classes that you have just named also represented by dealers; that is, I mean are they the same people who make those various products—are they dealers in cement also?

A. With the exception of cement asbestos shingles, which is usually a large operation, you might find a dealer manufacturing any of these other products.

Mr. Smith: Mr. Wooden, would it interrupt your examination to ask the witness what he means by "dealer"? I do not believe that word has been defined so far in the examination.

4209 Mr. Wooden: I was using it in the very generic sense that a man buys cement and resells it as cement.

Mr. Zimmerman: Buys it not for his own use.

(Discussion off the record.)

Examiner Norwood: What do you mean by "a dealer"?

The Witness: I mean a person, firm or corporation who buys cement from a manufacturer for resale to users.

Examiner Norwood: Go ahead.

By Mr. Smith:

Q. You have eliminated there, have you not, all question as to whether a given dealer or a given purchaser has or has not facilities for storage to handle the cement when you say what you have said?

A. Mr. Smith, I have tried to stay away from that by saying a person or firm who buys from a cement manufacturer.

Now, if you want my definition of a dealer in detail I think the definition which appears in the N. R. A. Code is an entirely proper definition of a dealer.

Q. What is it?

A. It is a person, firm or corporation, who is equipped to handle cement and other building materials for resale, and able to handle contracts for the sale of cement.

By Mr. Wooden:

Q. That still leaves open the question of who is to
4210 decide whether a given dealer comes up to that definition or not, doesn't it?

A. Now, if I may answer, as a representative of the Universal Atlas Cement Company, we will decide that.

Q. Mr. Reiter, did the checking as to general requirement contracts serve any different purpose or purposes than those served by the checking of the specific job contracts?

A. No, I think they served the same purpose.

Mr. Wooden: Your Honor, I want the record to show at this point I am reading off the record a portion of Exhibit 556, some paragraphs from a letter of the president of the Institute, Mr. Conn, in July, 1933, in submitting the proposed code to the N. R. A.

Examiner Norwood: Are you going to read that off the record?

Mr. Wooden: Yes.

Mr. Zimmerman: Excuse me. Will you read his statement to me?

(The statement was read.)

4211 Examiner Norwood: Go ahead.

Mr. Wooden: Let me add that it relates to this subject we are now on.

Examiner Norwood: What is that, Exhibit 536?

Mr. Wooden: Exhibit 556.

(Discussion off the record.)

Examiner Norwood: You may go ahead, Mr. Wooden.

By Mr. Wooden:

Q. Mr. Reiter, showing you Exhibit 595-A to F, inclusive, and calling your particular attention to 595-E, I believe first the entire exhibit is your composition, is it not,

consisting of a letter and a memorandum accompanying the letter (handing document to witness)?

A. (Examining document) Yes, sir. Do you want me to explain it?

Q. No, I do not need the identification. But referring particularly to 595-E, under the subject of "Contract filing," which is the subject we are now on, the statement is made that "The Institute's present method of filing and reporting contract information is undoubtedly of less value than during a period of a rising market." Will you please explain why that was the case?

A. If a number of contracts on a large quantity of cement were under contract at a market price and then the market raised and many of these contracts phony, or
4212 in error as to the quantity required, and no effort was made to confine the quantity of cement shipped under them to the actual requirements of the jobs covered by these contracts then the cement companies would furnish a large quantity of cement at less than their new and higher market price, contrary to the requirements of their contract, and therefore would not secure their higher market price on that quantity of cement.

Q. How would that be contrary to the provisions of the contract?

A. Because, Mr. Wooden, their contracts are specific that, for example, the cement covered by this contract is all that is required by the following described job—and then they set out that very carefully—or one-half of the cement required by this job etcetera. That is all they are required to furnish.

Q. Showing you papers marked Exhibit 1013-A, B, and C for identification, will you state what they are?

A. 1013-A is the form which I mentioned a while ago furnished by the Cement Institute to its members upon which contract information on closed contracts was furnished to the Cement Institute office.

1013-B is the form upon which changes in contract information were furnished to the office and 1013-C is a special form of the Cement Institute used in the Northeastern Division, which I did not use in the Chicago Division, which pertains to the change from a specific sales order
4213 form to a specific contract form with a dealer in the event of an increase of price.

Mr. Wooden: I offer those in evidence.

Mr. Zimmerman: Are these the forms that were actually used by the Institute?

The Witness: Yes, sir.

Mr. Zimmerman: There would be no objection then, I take it?

Mr. Leisure: No.

(COM. EX. 1013-A, B, and C was offered and received in evidence.)

Q. I notice on Exhibit 1013-C the language, "Purchaser has furnished record of delivery showing blank barrels delivered to contractor prior to date of advance in price." What is the relation of the advance in price to such a report?

A. There are two forms of contracts or purchase orders of which you will find samples as a supplement to the N. R. A. Code. The first is a specific job contract of which I have been speaking. The other is the specific order form entered into by some companies with dealers only and that merely is an order from a dealer to ship for a certain job or the requirements of certain work and it states on its face that in the event of an increase of price within ten days thereafter, a specific job contract will be en-
4214 tered into at the then market price.

Q. At the then market price rather than the previous price?

A. I am in error about that—at the prior price; in other words, at the lower price before the increase occurs.

Q. Showing you a paper marked Exhibit 1014 for identification, appearing to be an original letter over your signature, addressed to H. S. Jennings of the Wabash Company, dated July 22, 1935, will you identify that as your signature and your letter?

A. Yes, sir.

(COM. EX. 1014 was offered and received in evidence.)

Q. Mr. Reiter, did you have a larger number of requests from your members for checking of specific job contracts about the time of any increases in price by a comparison with other times?

A. I believe that we did.

Q. Does that account for your language in this letter when you say, "We find no contract of your company covering this project, and inasmuch as there have been raises in price since this contract was awarded we are in-
4215 vestigating this matter"?

A. I refer there to a provision of the amended

code, which I don't quite recollect, which if I had a copy, an amended copy, I could see specifically what was in my mind.

But here was a case where one company had filed a contract with the Cement Institute, and it had also filed a price at this destination, and which the Wabash Company, Mr. Jennings' company, had also.

They thought the Wabash Company were continuing to ship. And under the code it was all right to ship a contract at the contract price, even though it was less than the new market price. But not having filed any contract—it appeared that the Wabash Company had none—therefore if they were shipping on the old price on this contract they were violating the provisions of the amended code.

Q. This was in July, 1935, was it not?

A. Yes, sir.

Q. That this came up?

A. Yes, sir.

Q. By the amended code you mean the one that the Trade Practice Committee was administering following the N. R. A. Code?

A. It was the last N. R. A. Code (indicating document).

Q. I see. May 11, 1935, was it?

A. Approved May 11th; effective—

4216 Mr. Zimmerman (interposing): He wanted to see that.

The Witness: Let me see that (indicating).

Mr. Zimmerman: It may be of some help to him in answering these questions. That is the reason I handed it to him.

A. (Continuing.) Well, that confirms the answer I have given you.

Section 7, referred to in that letter, is a requirement that every contract or order entered into by a member of the industry shall be filed with an agent of the Code Authority, which in that case was myself.

Mr. Zimmerman: Now, I would like to corrrect for the record the misapprehension that might be created by Mr. Wooden's question.

There is nothing in the evidence tending to show that there was any other code in existence at that time, than this amended code, approved May 11, 1935.

There was no code that the Trade Practice Committee evolved and was administering in July, 1935.

Mr. Wooden: I did not say they evolved it. I did say something about their administering it, and that is my understanding.

Mr. Zimmerman: Anything different from this?

Mr. Wooden: No. But they carried that on.

4217 Mr. Zimmerman: This was a short time I think after the Schechter decision in an attempt to carry on.

Examiner Norwood: All right.

By Mr. Wooden:

Q. I am showing you, Mr. Reiter, some papers marked for identification Exhibit 1015-A to D, inclusive. They purport to be copies of various reports, three of them Institute reports, on Institute report forms. The other, 1015-B, is a copy of an inter-office communication of the Louisville Cement Company. All the papers relate to the Louisville Cement Company. No; I am mistaken. 1015-D relates to the Kosmos, but at any rate I am showing them to you and asking you if you recognize or remember the circumstances that are represented by those papers, and whether you will accept those as being authentic copies of the originals?

4221 The Witness: I, of course, have never seen this inter-office communication nor have I any knowledge of it. That is marked 1015-B. I have no recollection of the other matters mentioned in these reports, apparently of the Cement Institute, and that may be explained by the fact that others had authority to sign my name to such reports.

Particularly, however, on 1015-A and 1015-C it says here in typewriting, "Pencil notations" and undoubtedly that pencil notation is not one of the Cement Institute.

1015-B is signed by my assistant at Chicago; so all I know is what I see on this paper.

Mr. Zimmerman: May I ask the witness a question as to whether or not these are originals or copies of a copy so far as he can see?

The Witness: They are quite evidently copies of the originals with some notations.

4222 Mr. Zimmerman: You have not seen the originals, so far as you know?

The Witness: So far as I know, I have not.

4223 Examiner Norwood: I have stated that he may offer them. They have not been received yet.

Mr. Zimmerman: I beg your pardon, your Honor. Then, they are not received?

Examiner Norwood: No; they have not been received.

Mr. Wooden: But my offer is on the record, I understand, though.

By Mr. Wooden:

Q. Was it customary, Mr. Reiter, to send copies of the Institute's reports showing the results of checking contracts, to the district trustee in each district the contract fell in?

A. Only in the case of district 6 where there was no salaried representative of the Cement Institute, and they were sent to the district trustee there for his information.

Q. I asked you a while ago whether the Institute sometimes informed its members after checking a specific job contract that there was no obligation on their part to fulfill the contract. After seeing these papers is your memory refreshed on that to any extent?

4224 A. Yes, and that statement was put in this shape that "We see no obligation" or "We see no further obligation under this contract," and that was preceded by the complete report of the facts which our engineer found in the field.

4225 Q. I believe I asked you some time ago about the procedure with regard to cancellation where duplicate contracts were found to exist. Were there sometimes disputes between members as to which one should cancel and which one should fulfill the contract?

A. I do not know as to dispute between members, but a marked difference of opinion sometimes occurred by their replies to our reports.

Q. What principles determined the settlement of such differences of opinion?

A. So far as I was concerned, the statement of the user of that cement to our field engineer. To make that clear, if the contract was for 10,000 barrels and there were three cement companies which had a contract for 5,000 barrels —I should have said if the requirements were 10,000 barrels and the user told us that he was going to take 5,000 barrels of Brand A and Brand B, we would so report it in the contract. If Brand C having a 5,000 barrel

contract was entirely out, that looked all right to us, but that did not always occur.

Q. Did the question of proirity or time of making of contracts enter into it?

A. Yes. In our reports by the nature of the form, the date of the contract was, I believe, always given or, at least, it was referenced so that they could, from in-
4226 formation which the cement institute had already furnished, find the date of the contract.

Q. Was the earliest date of the contract determinative of which one was entitled to fill the contract?

A. I would say from returns of reports to the Cement Institute that some sometimes considered it that way and some gave it very little consideration.

(Discussion off the record.)

By Mr. Wooden:

Q. Was the practice in the different divisions on checking contracts the same as in District No. 6 with the exception that, in No. 6, you sent copies to the trustee of the district?

A. Let me hear that question again, please.

(The reporter read the question.)

A. As I have said, the practice was similar in all districts to that in the Chicago division, about which I spoke. Now there were some variations, but the practices were, generally, the same. The principal differences were that because of the lack of finances, particularly in some districts, we did not always use field checkers, but merely reported their contracts into the Cement Institute and reported them out in the manner indicated.

Q. Did you give similar advice in other divisions re-
garding not being obligated to fill the contract where
4227 there was duplication?

A. Well, I do not consider that advice. I consider it an opinion of ours based on the facts stated ahead of that statement.

Q. Well, whatever you call it, whether an opinion or advice, was the practice in that regard the same in the various divisions?

4228 A. I really couldn't answer that question because I didn't write nor see the reports in the other divisions. After I became general manager and really in charge of all offices, this work was promptly discontinued.

Q. How large an expenditure was involved in this contract check?

A. It was one of our major expenditures in the Chicago Division.

In 1930 we had some 7500 contracts filed with us, and borrowed a number of men from cement companies to make the initial check.

It finally worked down to a regular corps of some 10 or 11 engineers. It varied according to the contract on file.

Q. How many thousands of dollars a year would you say was spent on contract checking?

Mr. Zimmerman: Is that really material?

The Witness: I can't answer it anyhow, Mr. Wooden; I don't know.

4229 Washington, D. C.,
Tuesday, March 15, 1938.

4230 GEORGE H. REITER resumed the witness stand as a witness for the Commission and testified further as follows:

Direct Examination (Resumed) by Mr. Wooden.

4231 Q. Mr. Reiter, I am showing you a paper marked 1016 for identification. Will you identify it as an authentic reproduction of a copy of your letter to Mr. Cree of the Aetna Company of May 1, 1934 (handing document)?

A. (Examining document.) Yes, sir.

Mr. Leisure: I think other than the fact that it is still code material we have no other objection, Your Honor.

(COM. EX. 1016 was offered and received in evidence.)

Q. I notice in this exhibit, Mr. Reiter, that you inquire for the contract price on a certain contract. That leads me to ask whether during the code period the contract checking activity of the Institute, or the Code Authority, did include the checking of the price?

A. No, sir, it did not. This inquiry (indicating) was undoubtedly made to see whether he had violated his own open price filing provision.

4232 Q. In the case of a complaint of a violation of the code that would bring in the question of whether the

price quoted in a particular instance or on a particular contract was in accordance with the filed price?

A. Yes, the complaint might be filed on that ground.

Q. Showing you papers marked 1017-A, B and C for identification, will you identify them as authentic copies of reports made on Cement Institute forms by the company or companies referred to in the body of the papers (handing documents)?

A. (Examining documents.) Mr. Wooden, I identify these as photostatic copies of forms of the Cement Institute, quite evidently taken from our Cement Institute files, but I have no recollection of the cases.

Mr. Wooden: All right. I offer them as samples of the reporting done on such forms.

By Mr. Wooden:

Q. Is that a fair sample, would you say (indicating)?

A. Yes, sir, that is indicative of some.

4233 Mr. Leisure: May I ask the witness a question on these, your Honor?

Examiner Norwood: Certainly.

By Mr. Leisure:

Q. These exhibits which have just been shown to you, Mr. Reiter: Do I understand that they are samples of all of this kind of material or if these just happen to be just what they are; that is, I have no objections to the exhibits, but I do not want them to go in as fair samples of something unless they are similar to others.

A. We had many different cases. It would be hard to say that any one was a sample or an average of all.

Q. That is what I thought. But these are samples of the ones they represent?

A. That is correct.

Mr. Wooden: Samples of the reporting done on those forms. Now, of course, the contents of a report made by a particular company on the form may vary from the report made by another company on another case.

Mr. Leisure: That is what I meant. We have no objection.

(COM. EX. 1017-A, B and C was offered and received in evidence.)

4234 By Mr. Wooden:

Q. Referring to Exhibit 1017-C, the Institute writes the Standard Portland Cement Company under date of April 6, 1936, saying "We agree with you that the above contract was not awarded prior to March 3rd." What is the significance of the reference to that date?

A. I cannot answer that without the other papers I am afraid, Mr. Wooden.

Q. Can you say whether or not there was a price advance effective about that date?

A. No, I do not remember. It might be that the contract was signed before the work covered by it was awarded.

Q. Going on your general knowledge of the course of prices in the industry, can you say whether or not there was any change of price at about that time?

Mr. Zimmerman: I think the witness has already answered that he does not know that.

Examiner Norwood: Let him answer it again.

Mr. Wooden: Let him answer it aside from the exhibit.

The Witness: As a matter of fact, I do not know whether there was a price advance or not in this area.

By Mr. Wooden:

Q. Was the checking of contracts discontinued by the Institute during the year 1936?

4235 A. Yes, sir.

Q. Can you fix the date?

A. I think in all divisions it was in September of that year and I requested all divisions to cease checking in accordance with the instructions of the board of trustees on that date that their monthly reports came out, which would be some time after the middle of the month.

Q. What was the reason or reasons for discontinuing the contract checking at that time?

A. The board of trustees decided to curtail the activities of the Cement Institute and that was an item which occasioned considerable work and considerable cost to the Institute and they decided, for that reason, to discontinue it.

Q. Was it discontinued in every section where it had been carried on?

A. Yes, sir.

Q. Has it been resumed in any section since that time?

A. No, sir.

Q. Directing your attention to 137-J, which is a portion of the Chicago Division minutes, dated April 8, 1930, is appears there that, during February and March, total cancellations of 549,000 barrels were filed with the office and it was expected that the total would greatly increase.

Can you give me any light upon how cancellations of such a large amount of cement were worked out be-
4236 tween the companies that had duplicated contracts, as to which ones they would cancel or in what proportions they would cancel?

A. In the first place, such cancellations were only in part, and I would say in small part, of the duplicated contracts. My experience indicates that, by far, the larger amount would be imaginary contracts or contracts where the amount was over-estimated with a single company. I cannot answer your question as to how such cancellations were worked out except that that was a result of the cancellations filed with us, Mr. Wooden.

4237 By Mr. Wooden:

Q. Will you explain what you meant, Mr. Reiter, by "imaginary contracts"?

A. They were definite contracts between the purchaser and a cement company covering specific work which did not in fact exist.

Q. That is, there was no specific job to be filled in, do you mean?

A. That is exactly what I mean.

Q. For any amount of cement?

A. For any amount.

Q. Did the existence of such contracts, and the desire to check on them have any important part in the formation of the Institute?

A. Mr. Wooden, I can't answer that because I wasn't a party to the formation of the Institute.

Q. On this Exhibit 137-J, to which I referred a moment ago, there are two lines which were x'd out in typing, and I have made an effort to read the two lines through the x'd out figures. I wish you would see if I have read them correctly. I think I have (handing document).

4238 A. To answer your question, Mr. Wooden, your eyes are better than mine. I can't even read one letter through this x'ing.

4240 Q. Were you the manager of the Chicago division in April, 1930, Mr. Reiter?

A. Yes, sir.

Q. Is this your report then (indicating)?

A. Yes, sir.

Q. Are you able to read the two lines that were x'd out in the Exhibit 137-J?

A. (Examining document.) I am not, Mr. Wooden.

Examiner Norwood: You do not know what was in those lines originally prior to their being effaced?

The Witness: No, sir.

4241 Mr. Wooden: I wish to offer at this time, your Honor, Exhibits previously identified as 141-14-13-27-63-28-65 and -77, all relating to the subject of contract checking and all, I believe, identified by Mr. Milwee as obtained from the files of the Cement Institute at New York.

4242 By Mr. Leisure:

Q. Referring to Exhibit 141-14, is the signature on that letter, which looks like T. O. L etherton—who is he?

A. Sales manager of that company.

Q. And "that company" being—

A. (Interposing.) The Allentown Portland Cement Company.

Q. Referring to Exhibit 141-77, addressed to a gentleman by the name of T. L. Hughes: Do you know who Mr. T. L. Hughes is?

A. Yes, he is assistant western sales manager of the Lehigh Company.

Q. He is connected with the Lehigh Company?

A. Yes, sir.

Mr. Leisure: As to the other two exhibits—141-13 and 141-14—we object to them as being incompetent, irrelevant and immaterial.

4246 Examiner Norwood: How about these others? Shall we sift those out? Mr. Wooden, I mean you can hold those others until you get a little more information on them. As to the dates and places perhaps there is some information you can get on them, but you will have to hold them. Those are 141-13 and 141-14.

Mr. Leisure: As to the others that are being offered by Mr. Wooden, 141-27 appears to be written by a district manager to the Institute, and we have no objection to that.

141-28 appears to be written by someone connected with the Alpha Company to the Institute, and we have no objection to that.

141-63 appears to be written by a district manager to the Institute, and we have no objection to that.

141-65 appears to be written by a district manager to someone by the name of McConnell.

By Mr. Leisure:

Q. Who was Mr. McConnell?

A. General manager.

Q. Of the Institute?

A. Right.

Mr. Leisure: And we have no objection to that.

141-77 was written by a district manager to Mr. T. L. Hughes.

4247 By Mr. Leisure:

Q. Who I believe you said was connected with the Lehigh Company?

A. That is right.

Mr. Leisure: We have no objection to that.

Examiner Norwood: What is that, 75?

Mr. Leisure: 77.

4253 (COM. EX. 141-27-28-63-65 and 77 was offered and received in evidence.)

Mr. Wooden: Your Honor, I offer at this time some papers marked 1018-A, B, and C, consisting of copies of two letters, one from G. E. Pearson, vice president of the Lone Star, to Charles L. Hogan, a vice president of the same company; and a letter from one A. M. Hauser, to J. C. Bowen, vice president of the Lehigh.

These papers have not been previously identified, but were obtained by our Mr. MacIntyre from the files of the Lone Star and Lehigh Companies.

I can call Mr. MacIntyre and have him identify those if counsel for respondents are unwilling to waive further identification.

Mr. Leisure: That won't be necessary, Mr.
4254 Wooden, if these appear to be original letters.

Mr. Wooden: I believe the offer is pending of these two exhibits, 1018-A, B and C.

Mr. Leisure: No objection.

Examiner Norwood: Received as marked.

(COM. EX. 1018-A, B and C was offered and received in evidence.)

Q. Mr. Reiter, since the Institute discontinued the checking of contracts does the Universal Atlas Company do anything for its own purposes in the way of checking contracts against duplication?

Mr. Hershberger: You mean checking its own contracts, Mr. Wooden?

Mr. Wooden: Yes, sir.

A. We have no means of checking duplication, except such information as we might get from the customer, and that is incomplete and inaccurate.

By Mr. Wooden:

4255 Q. Do you have any systematic means in the Universal Atlas organization of knowing whether or not your contracts, specific job contracts, may be duplicated in part by contracts covering the same job with other companies?

A. No, sir.

Q. How has that worked out in your experience without that effort to check contracts? Do you consider yourself at the mercy of the buyers in duplicating their contracts?

A. I would say that we were to a large extent.

Q. During the time the Institute engaged in contract checking did you find instances where companies that had contracts that duplicated others were reluctant to cancel them?

A. Yes, sir.

Q. Was one of the methods that was adopted to remedy the situation regarding concrete block manufacturers' general requirements contracts to limit the time to a quarterly period?

A. It is customary with the Universal Atlas Company, and so far as I know with our competitors, to take such requirement contracts for a products plant for a period of three months, and that has been the case for some time. I do not know whether before that became the practice they took requirements contracts for a longer period,

or if they only covered specific contracts with products plants.

I am sorry that I do not know, or do not recollect.

4256 Q. What was the reason for having the three months' limitation instead of, say six months, or a year?

A. What is the reason?

Q. Yes.

A. Well, this uncertainty of your commitment is at least reduced by that extent. You have an uncertainty over a three month's period, rather than over a six months' period, or a year.

Q. It reduces the amount of the uncertainty in terms of barrels, is that right?

A. That is right.

Q. Has the Universal Atlas cancelled any contracts since the Institute checking of contracts ceased?

A. Yes, sir, we cancel them on our own information.

Q. Information as to what?

A. Information, for example, as to having taken a contract which our representative finds later is completed or does not exist or is over-estimated. Cancellations of over-estimated contracts, in part, come to my attention quite frequently.

Q. Do you work it out with any competitors as to whether there is any duplication which calls for any cancellation?

A. No, we do not, Mr. Wooden.

Q. Was this three months' limitation regarding cement block manufacturers' general requirements con-

4257 tracts: did that exist prior to the N. R. A. Code?

A. I believe that it did.

Q. Was it included as one of the provisions of the N. R. A. Code?

A. Yes, it was.

Q. Was it included as one of the provisions of the compendium?

A. I do not recollect.

Q. Was there ever a resolution adopted by the Institute with regard to that three months' limitation on concrete block contracts?

A. I do not know, Mr. Wooden.

Q. Now, passing to the subject of the distribution of cement through dealers: have there been some rather

long recognized principles which determine what kind of sales should be made direct by manufacturers and what kind should be made through dealers?

4258 The Witness: My knowledge of this matter began with the time that I became manager of the Cement Institute and I gained some information as to the purchase contracts filed with the Cement Institute.

4259 The Witness: Then I had knowledge of such sales when I was with the Missouri Company and then the full practice as outlined by the Cement Code and further, the sales policy of the Universal Company since, and judging by that and what I was told regarding the
4260 marketing practices included in the Code, I would say that there had been a rather uniform practice of direct and indirect selling through all that period.

4261 Q. Speaking of the period prior to the code, what was the line or lines of demarcation between sales that were made direct and those that were made through dealers?

A. In general sales as reflected in the contracts inside of municipalities and cities, towns and villages and so forth were quite evidently sold to a dealer for resale.

And sales to the United States Government, State highway departments on their own purchase were direct.

Sales to railroads were direct.

Q. Did you have representations made to you from time to time by various associations or organizations of dealers as to what classes of trade they thought should be sold through dealers?

A. The first of such representations that I myself had was in the code days in connection with the retention or suspension of Article 11 of our code, this Article 11 dealing with marketing practices.

Q. Do I understand that nothing of that sort came to your attention while you were in Chicago as the division manager of the Institute?

A. Nothing.

Q. Nor as sales manager of the Missouri Portland Cement Company?

A. Undoubtedly there did in that connection, but there was no complaint of any dealers' organization. We
4262 frequently have complaints from individual dealers of one kind or another.

Q. Were there meetings or conferences between deal-

ers' associations and representatives of the Institute with regard to that subject during the code days?

A. With representatives? No. With the Code Authority there were.

Q. So far as you know were there any conferences or discussions between representatives of the dealers' associations and the Institute prior to the code days, N. R. A. code days?

A. So far as I know there were not, Mr. Wooden.

Q. Then I take it that this general line of demarcation between direct sales and sales through dealers was something that you found in existence when you came into the industry?

A. Yes, sir.

Q. And how far would that go?

A. 1930.

Q. Within the period of your experience, since 1930, have there been changes in the classification of trade which might be sold direct and sold through dealers?

A. I believe it is generally the same, Mr. Wooden. There may be some minor changes, but I don't have any specifically in mind.

4263 Q. There was an article, I believe, in the N. R. A. Code that dealt with such matters?

A. That is right.

Q. Article 11?

A. Article 11.

Q. Was that suspended during a certain period, that Article 11?

A. It was suspended in January, 1934, something over a month after the code went into effect, I think six weeks or so.

Q. And did the suspension remain effective until 4264 the expiration of the code?

A. Yes, it did.

Q. During that period, however, were there not various attempts on the part of the dealers to have the article restored or amended, and put into effect as amended?

A. Yes. Mr. Wooden, it may be interesting to you to know that after this public hearing, which was a very large affair, on Article 11, subject to which it was suspended, the then Deputy Administrator in charge of our code instructed the Code Authority to try and work out an amended Article 11 with both the dealers and the contractors.

And we had a number of meetings looking to that end.

Q. What were the reasons that underlay the suspension of Article 11 in January, 1934?

A. I can summarize it in my own opinion.

Q. All right.

A. As being a desire on the part of the dealer to have all cement sold through dealers.

Q. I can understand why that desire might not have been conceded by the manufacturer or granted by N. R. A., but I still do not see the connection of that to the suspension of Article 11 as it had existed in the code up to that time.

4265 A. Mr. Wooden, there is no question but what this hearing on the suspension of Article 11 was initiated by the dealers, and that means they were not satisfied with the quantity of cement which was sold through them.

Now, I may be in error in stating that they wanted all of it sold through them, but at one time or another members of their Code Authority, or their committee, have to me indicated certain things that they wanted at that time to be sold through them. And when you add them altogether it means practically the same thing.

Now, does that constitute an answer to what you had in mind?

By Mr. Wooden:

4266 Q. As I understand it, your code up to January, 1934, Article 11 of that code, provided that certain classes of trade should be sold directly and certain sold through the dealers, is that right?

A Yes, sir.

Q. Why couldn't that article continue without a suspension of it entirely, is the point I am trying to make, and you say because they wanted more they suspended it all. I do not know whether I make my point or not.

A. I can give you a very practical answer.

Q. All right.

A. There are 90 cement manufacturers in the United States, and there are 30,000 dealers. And they had a lot more influence than we did. And the Administrator after this hearing just ordered that it be suspended.

Q. Then what was the situation during the suspension? What was the practice during the suspension?

A. Well, that I don't know, until much later.

Q. Was there any real change in the practice during the period of the suspension from what it had been before?

A. I can not answer that, Mr. Wooden.

Q. Do I understand you that the dealers made it plain that they wanted to sell even the classes of trade that had long been sold direct, that they wanted to handle that, such as sales to the Government?

4267 A. I have even heard arguments on that sale. However, when they start to concede something from 100 per cent sales through the dealers they first of all concede sales to the United States Government.

Q. How about State governments, the same?

A. Yes, they thought at that time that they could do a better job of selling State governments than we could, although that was another thing.

To make this plain, Mr. Wooden, there was a long period of discussion between the dealers' code authority and the cement code authority.

Their original position, which seemed to me to be that they wanted to handle all of the cement sold, gradually was changed, so finally they seemed to be about willing to take, or accept a marketing practice as was originally specified by Article 11. By that time May 27, 1935 had arrived.

4268 Q. Was not that subject, however, to this qualification, that they wanted the so-called W. P. A. business handled through the dealers?

The Witness: I believe your question refers to what the dealers wanted.

By Mr. Wooden:

Q. You said something just previously to that about the dealers being willing to go back to the previous division of business between manufacturers and dealers—previously to the Code—and I asked you if this was not subject to this qualification.

A. Yes, and in the opinion of the dealers, the W. P. A. work was within the class of work which they had handled before. It was usually small in amount and delivery was generally taken, and frequently a large part of the cement used, within towns, villages and cities.

Q. But it had always been the custom, had if not, for the manufacturers to sell the government even in small amounts—carload lots?

A. I do not think that is true where the work was located in cities. For instance, cement for post offices
4269 which, of course, were always in cities, was sold, if my memory serves me, through dealers for some time.

Q. As I understand then, it would depend on whether the job was located within the confines of the city or town in which the dealer was located?

A. Ordinarily such business all passed through the dealer's hand.

Q. Did not such departments—Department of Agriculture or the Department of Justice, Bureau of Prisons—for instance, in buying cement for additions to prisons, sell direct—

A. (Interposing): Yes, that was sold direct, but I cited another example, which was not sold direct, which was cement for post offices, which was through dealers; in other words, it was not universally applied, and cement required by government projects was not always sold direct.

Q. Did that vary somewhat in different sections of the country?

A. It may have, Mr. Wooden; I do not know.

Examiner Norwood: In some States, did not they sell through dealers only?

The Witness: Some classes of government work was sold through the dealers only.

By Mr. Wooden:

Q. The W. P. A. purchases, coupled with the depression, changed or injected a sort of new element into the situation?

4270 A. That is right.

Q. In comparison with anything that existed before?

A. That is right.

Q. And there was not any established policy in the past that would really cover it?

A. That is right, except that same class of work which would now be done by the W. P. A. would be done by private concerns before.

4271 Q. Mr. Reiter, before the N. R. A. Code, what was the usual or prevailing margin between the manufacturer's price to the dealer and the dealer price to the consumer?

A. There was no such thing as a usual differential.

I have known of cases of dealers' sales as low as 2 cents over the manufacturer's price to the dealer.

And I am talking now of carload quantities, Mr. Wooden.

Q. Yes.

A. And I have known of many sales at 10 cents per barrel over, which I would say was the customary or prevailing dealer differential which they attempted to get.

Q. On carload business or less than carload?

A. On carload business, yes.

Q. And on less than carload business how was it?

A. It would be high and I didn't know what those differentials were.

Q. Do you recall some time in the fall of 1930 4272 while you were with the Institute in Chicago, a condition that was characterized by the dealers cutting their margins, as you indicated, and then the manufacturers changed it to a 5-cent differential for a time?

A. I don't know whether I remember that, or whether I have heard about it, but I know at any rate at the present time of such a plan.

Q. You know at the present time of such a plan at that time?

A. At that time, yes, sir.

Q. What were the conditions that existed at that time and in connection with that matter?

A. The company who initiated that plan stated, I believe, that they were doing so because of the prevalence of widely varying dealer differentials, and proposed to sell to dealers and refund them at the end of the year 5 cents per barrel on all the cement they bought during the calendar year.

Q. Wasn't that conditioned upon the dealer having maintained the regular differential in order to get that extra allowance?

A. I don't remember whether it was or not.

Q. Was that company you referred to the Lehigh Company?

A. Yes, sir.

Q. As to the practice of the dealers at that time in cutting, that is what I understand, they cut their differentials in the form of a market price, didn't they, to their customers?

A. Yes, sir.

4273 Q. Did that have any unsettling effect upon the conditions in the sale to the dealers by the manufacturers?

A. Yes, sir, Mr. Wooden, in this way:

If a highway contractor, purchasing cement for his job, and his job might run through two or three country towns, in each of which were a dealer, and now apparently some of these dealers competed for the business by cutting the amount of their charge-up, and I would think the dealers stated that it was through the suggestion of cement salesmen at some time.

Q. Salesmen for mills?

A. Salesmen for the cement companies.

Now, then, if the salesmanager of one company did not allow or did not encourage its salesmen to, in turn, encourage the dealer to sell at an extremely small price, they would rarely sell such a highway contract.

Q. Was that policy of the Lehigh in withholding 5 cents until the end of the year adopted by other companies?

A. I was not directly dealing with those matters at the time, Mr. Wooden, but I think it was followed by some and not by others. There was a very wide difference of action at that time.

Q. What was the reaction of the dealers to that policy?

A. Some seemed to like it and some did not seem to like it.

Q. Would you say that the ones who did not like it outnumbered those who did? Did they make their

4274 protests known more effectively than the ones who liked it?

A. I would not receive those protests and I could hardly measure that.

Q. You knew, in a general way, what was going on at the time?

A. Yes.

Q. Were you aware that dealers' organizations were protesting that policy of withholding the 5 cents until the end of the year?

A. I do not remember and I did not see any dealer protests at that time. Certainly the matter was of sufficient importance for them to be interested in it one way or the other.

Q. How long did the policy in question, initiated by the Lehigh, remain in effect?

A. I do not know that.

Q. It was a comparatively short time?

A. That is right.

Q. Two months?

A. I would judge so.

Q. Did the condition then go back to one of a 10-cent differential?

A. No, I think at that time it went back to a single price to all purchasers; that is, there was no quotation by cement manufacturers to consumers who would be
4275 sold by dealers; in other words, the practice that is in effect at the present time.

Q. But so far as the prevailing differential between the dealer's cost in buying and his price in selling, did that center around the 10-cent differential as previously?

A. Well, I think it was about the same as it was previously until the time of the dealers' code and the so-called Modal mark-up.

Q. Under the dealers' code, was the dealer's differential changer, and if so, to what?

A. Under this Modal mark-up which received the approval of the N. R. A., their carload differential on cement—that is, on standard cement—was set at 15 cents per barrel.

Q. And as I understand it, prior to that time, it had been considered as 10 cents.

A. No, Mr. Wooden; I have tried to explain that. There may be places where they got 25 cents and as low as 2 cents, but I would say that 10 cents was possibly the prevailing mark-up.

Q. A sort of standard that was not always adhered to?

A. That is right.

Q. Sometimes more and sometimes less?

A. That is right.

4280 Q. Mr. Reiter, will you state anything you wish in addition to what you have already stated in clarification, or differentiation or explanation of the answers you have made in the last few minutes?

A. I would like to make it plain, if it is not already plain, that in talking about dealers' mark-up, or the difference between the sale of cement in carloads by the dealer, and the price which the dealer pays the manufac-

turer, that I was speaking from a knowledge of what the dealers sold cement for, and that that differential in all cases was set by the dealers themselves, or by their Modal mark-up, which was a feature of the dealers' Code during N. R. A. days.

Q. Was there at any time a suggested amount of mark-up suggested to the manufacturers?

4281 The Witness: May I hear the question?

(The question is read as follows: "Was there at any time a suggested amount of mark-up suggested to the manufacturers?")

Mr. Zimmerman: Was that "to" or "by?"

(The question was repeated.)

Mr. Wooden: "By" the manufacturers.

The Witness: Well, it is "by," is it?

By Mr. Wooden:

Q. Yes.

4282 A. I don't know of any.

Q. Do you know whether the Lehigh plan that we talked about a while ago suggested any special amount, any definite amount of mark-up?

A. That might be interpreted as such a suggestion if I am correct in my statement that they were retaining 5 cents a barrel to be paid to the dealer at the end of the year. I don't understand, however, that that plan definitely fixed the resale price of the dealer.

Q. Was that plan, that same plan, adopted by other companies in the industry, with the exception of International?

A. It is my understanding that several companies did adopt it, and many companies did not adopt it.

Q. Was International one of those that did not?

A. International was one who did not.

Q. I show you papers marked 1019-A to S, inclusive. Will you identify them as interpretations of Article 11 of the Code of the Cement Industry? (Handing documents to witness.)

4284 A. Yes, Mr. Wooden, all of these are letters, or interpretations of the Code Authority, pertaining to the provisions of Article 11 of the Cement Code.

By Mr. Wooden:

Q. Which in turn related to the subject of what sales should go through dealers and what should be made direct?

A. Yes, marketing practices.
Q. Among others?
A. Yes.
Q. That was not the sole subject dealt with by Article 11?
A. That is right.
Mr. Zimmerman: Does counsel now offer those?
Mr. Wooden: I offer those papers in evidence in order to get them in the record.
4285 Mr. Leisure: May I ask the witness a question, Your Honor?
Examiner Norwood: Certainly.

By Mr. Leisure:

Q. Mr. Leisure, here is a group of sheets of papers, 30 to 50 in number, written on the letterhead of the Code Authority, and signed "Chairman". What does that indicate, chairman of what?
A. Of the Code Authority for the Portland Cement Industry.
4287 (COM. EX. 1019-A to S was offered and received in evidence.)
Q. Referring to 1019-B, I note that the Code Authority held that C. W. A. projects, if awarded directly by C. W. A. administrators, should be classified as United States Government work. What were the C. W. A. projects?
A. I forget what those initials mean, there are so many.
Q. There are some other initials here—N. R. M., N. R. H. and C. W. A. work.
A. It escapes my memory what those initials mean.
Q. At that time, along in December, 1933, and January, 1934, was it not the consistent position of the
4288 Code Authority that all sales to Government agencies came within the provision of Article 11, which permitted such sales to be made direct by manufacturers?
A. I believe that is true. I could tell you with a copy of the code before me.
Q. We have that too (handing pamphlet to witness).
A. (After examining:) Yes, sir.
Q. Now, as I understand it, that article 11 was suspended sometime in January, 1934, by order of the N. R. A. Administrator?

A. That is right.

Q. Did the Code Authority have some questions put up to it for decision after that time which involved the question of the form of selling or method of selling, whether through dealers or direct?

The Witness: I remember that they did have 4289 such questions put up to them, Mr. Wooden.

By Mr. Wooden:

Q. What was the practice or policy of handling such questions in view of the fact Article 11 had been suspended?

A. The practice was to advise them that since Article 11 was suspended, such method of sale was no longer prescribed by the Code.

But, Mr. Wooden, before you ask another question, may I say we talked about the suspension of Article 11. But not all of Article 11 was suspended. Essentially, however, most of the marketing conditions concerning which you have been asking questions were among those suspended.

Q. Suspended so far as this particular subject goes; that is, the question of the channels through which cement should move to the consumer?

A. Yes, I believe so, but I would have to refresh my memory as to the sections which were retained without suspension.

Q. I am showing you papers marked 1020-A to H, inclusive. Will you identify those as authentic reproductions of correspondence or communications of the Code Authority during the spring of 1934?

A. (After examination:) Yes, sir.

Mr. Wooden: I offer them in evidence, (handing papers to Mr. Leisure).

4291 (COM. EX. 1020-A to H was offered and received in evidence.)

Q. Mr. Reiter, during the summer of 1934, was an amended draft of Article 11 submitted to N. R. A. for consideration?

A. Well, one was worked on by members of our Code Authority and others with whom we were asked to confer.

Q. Were those conferences held with the National Federation of Builders' Supplies Association?

A. Well, with members of that association who were also officers of their Code Authority.

Q. Yes.

A. And also with contractors, but we could not follow out a part of our instructions by our own Deputy Administrator; namely, to meet jointly with both dealers and contractors groups because they would not meet together.

4292 Q. They had different interests, I assume?

A. Decidedly.

Q. I am showing you papers marked 1021-A to F, inclusive, for identification. Will you identify them as a draft of a proposed amendment of Article 11, and a circular distributing the draft as such? (Handing documents to witness.)

A. (After examining documents.) Yes, sir.

I would like to say in connection with the letter of transmittal, signed by Mr. Rader as chairman of the Code Authority, and addressing to all members of the industry, that it involves a hearing on this amended Article 11, as he says was proposed.

Q. The hearing you mean before N. R. A.?

A. Before N. R. A.

Q. All right.

A. A formal hearing.

Mr. Wooden: I offer the papers in evidence.

4294 (COM. EX. 1021-A to F was offered and received in evidence.)

Q. I notice, Mr. Reiter, 109 (a) of this proposed amendment of Article 11 that the United States government and state governments might be sold direct, and then in parenthesis, "except that federal relief agency work located principally in cities, towns or villages shall be sold through dealers." That exception appeared there, did it not, for the first time by comparison with the original Article 11?

A. So far as I know, it had not appeared between the cessation of Article 11 and this one here.

Q. I see.

A. That wording did not occur in the N. R. A. Code itself.

Q. I have used the expression "W. P. A. purchases;" the so-called W. P. A. purchases really did not become a factor until 1935, did they?

A. I presume that some of these alphabetical names

that you mentioned a while ago would come under the heading of W. P. A. purchases.

4295 Q. The expression used here is "Federal relief agency work."

A. Oh, yes; I see.

Q. I understand, Mr. Reiter, that you said there was no formal hearing before the N. R. A. on this proposed amendment of Article 11. Was there any informal hearing of any kind?

A. To this extent, that we talked to our Deputy Administrator from time to time and advised him of progress or lack of progress with the others with whom we suggested that we confer.

Q. Why didn't it go to the extent of having a normal hearing?

A. I don't know.

Q. Do you know whether or not there were any objections filed to this proposed amendment of Article 11 on the part of others than those who presented it?

A. No, I don't know that. I don't know how there could have been, inasmuch as the circulation of this was quite limited, namely, to our own members, and probably to the dealers' organization.

Q. It was submitted informally to N. R. A. for its consideration, was it?

A. No; only as I tell you, to our Deputy Administrator, so far as my recollection serves me.

4296 Q. And who was that?

A. That at that time was Barton W. Murray.

4297 Q. Was there, notwithstanding the lack of N. R. A. acceptance of this proposed revision of Article 11, a substantial acceptance of the principle as stated in 9(a) there, that the federal relief agency work should be sold through the dealers?

A. Well, I would hardly know that, Mr. Wooden.

Q. That is a little digression while we are on this exhibit to another point. I notice that it was proposed here, under 9(a) that where land grant rates or special rates were applicable a member might file his destination costs computed on land grant rates and that prices might meet those costs thus established. As I take it, that was never made a part of the code?

A. No, sir.

Q. The practice of so filing those destination costs had

already been carried on before this proposal to amend the article was presented, was it not?

A. On the interpretation of the Code Authority that they were, in fact, prices.

Q. Another digression while we are on this same exhibit; Paragraph No. 11 provided that in order to prevent diversion of cement and to insure the broadest field of active competition, cement should not be quoted or sold where the destination and quantities are unknown. That, I take it, was also never actually incorporated into the code?

4298 A. No, that was never incorporated into the code.

Q. Showing you a paper marked 1022-A for identification, will you identify it as a copy of your letter to Mr. Coffin, president of the Institute, of May 27, 1935?

A. I so identify it.

Mr. Wooden: I offer it in evidence.

Mr. Leisure: We have no objection.

Examiner Norwood: Received as marked.

(COM. EX. 1022-A was offered and received in evidence.)

Q. Mr. Reiter, after the presentation of the proposed revision of the Article 11 in July, 1934, were there any changes in the situation during the remainder of 1934 or the early part of 1935?

Mr. Leisure: Now, what situation? I do not quite get that.

Mr. Wooden: The situation reflected by or involved in Article 11 with regard to the dealers' share of the

4298-A business and so on.

The Witness: I don't know of any changes in the situation regarding Article 11, Mr. Wooden.

By Mr. Wooden:

Q. Or any changes regarding what classes of trade were handled by dealers and what handled by manufacturers?

A. During that period I wouldn't know about that.

Q. In the early spring of 1935 did various manufacturers put out announcements of policy which conformed to the dealers' questions regarding this matter of what trade should be handled by the dealers and what handled direct?

A. I think my earliest definite information about that, Mr. Wooden, was about May, 1935. And at that time, or approximately that time, I saw one or more printed policies, sales policies, of cement companies.

Now, how they were worked out, at what time they were actually issued, or to what extent they satisfied the dealers, I don't know.

Q. Did they concede to the dealers the Federal relief agency business?

A. The policies which I saw did exclude from direct sale cement required by federal relief agencies.

Q. While retaining direct sales, or privileged direct sales on federal purchases that were not in the class of federal relief agencies, did you attend any meet-
4298-B ings during the spring of 1935 at which representatives of the dealers and the manufacturers discussed that question?

A. I may be getting a little ahead of the time you have in mind, but my mind jumps ahead to a meeting with Captain Collins, of the Procurement Division of the U. S. Treasury Department, about which I testified some days ago.

Q. That is later on. I am talking about in the spring of 1935.

A. I think I attended no such meeting.

Q. Did you know whether or not any such meetings were held?

A. So far as I knew or know now no such meetings were held.

4299 Q. Referring to Exhibit 1022-A and your appointment in May, 1935, as a member of the informal committee having to do with the purchase of cement under the four billion eight hundred million dollar appropriation, did you understand at that time whether dealers' organizations had also appointed a committee to deal with that subject?

A. When I received this letter, I had no prior knowledge of the thing that was in Mr. Coffin's mind. This was my first information about it. Since that time I made it my business to find out what had gone on before and it was in line with what I testified to the other day.

Q. Well, is it in line with the question that I asked just before as to whether you ascertained that dealers' organizations or associations had appointed a committee to deal with the same subject?

A. Well, I know, that dealers' organizations, at least through their full time officers, were interested in it prior

to this time or I found that out later—that they were interested in it prior to the date of this letter.

Q. I do no seem to have the letter of May 18 from Mr. Coffin appointing you as chairman of that committee. I would like to request that it be produced.

Mr. Leisure: 1935?

Mr. Wooden: Yes, May 18, 1935, Mr. Coffin as president, to Mr. Reiter.

4300 Mr. Leisure: All right.

By Mr. Wooden:

Q. I am showing you papers marked 1022-B to I, inclusive, for identification. There are two papers, one addressed to you and the other addressed by you to the Trade Practice Committee, the former dated June 28 and the latter July 8, 1935. Will you identify those as authentic copies of letters which you either received or sent out?

A. Yes, sir.

Mr. Wooden: I offer those in evidence.

Examiner Norwood: Any objection?

Mr. Zimmerman: I have not finished looking at them. They are rather closely written and long.

Examiner Norwood: Now, go ahead with your statement, Mr. Leisure.

Mr. Leisure: As to 1022-I, being a letter from Mr. Reiter to the Trade Practice Committee, we have no objection to that exhibit.

4305 Q. Referring to Exhibit 1022-A, and your reference there to your being chairman of an informal committee, who were the other members of the committee?

A. Messrs. Coogan, Lucas, Neylan, Storey, Sunderland and Warren.

Q. That is the Trade Practice Committee?

A. That is the Trade Practice Committee.

Q. But the informal committee that you were chairman of was for the purpose of keeping in touch with various departments in Washington regarding purchases of cement under that W. P. A. program of four billion eight hundred million dollars appropriation?

4306 A. As I remember it, the full committee was myself as chairman and the other names which I just read.

Q. There was no special committee for the purpose of keeping in touch with that government department work?

A. Well, he named as that committee myself as chairman and those others.

Q. He did that by the letter of May 18, which was before the code was ended?

A. Yes.

Q. And the Trade Practice Committee was not formed until the code was ended?

A. That is right—until June of that year. Well, until after this letter was written; in other words, those names that I have called are members, at the time the letter was written, of the Code Authority.

4307 Q. And also of the informal committee that was appointed by Mr. Coffin on May 18 to keep in touch with that particular matter?

A. That is my recollection, Mr. Wooden.

Q. All right. Showing you papers marked 1022-J to M, inclusive, purporting to be letters of Mr. E. J. Mehren, will you identify them as letters received by you from Mr. Mehren?

A. Yes, sir; I will so identify them.

Mr. Wooden: I offer them in evidence.

Q. Who was Mr. Mehren that wrote those letters, Mr. Reiter?

A. He was at the time president of the Portland Cement Association.

Examiner Norwood: This correspondence—

4308 Examiner Norwood: This correspondence between you and Mr. Mehren—

Examiner Norwood: To you?

The Witness: That is right.

By Mr. Wooden:

Q. Were members of the Portland Cement Association also members of the Cement Institute?

A. Some of them were. Some of them were not.

Q. How did Mr. Mehren happen to be appearing here in this matter for the Cement Institute?

A. He was not appearing for the Cement Institute.

Q. He said he signed the name of Cement Institute to a brief, I believe?

A. I didn't care for that very much, and that was tersely explained to him.

4309 Examiner Norwood: What was Mr. Mehren's official capacity?

The Witness: He was president of the Portland Cement Association, another trade association of this industry.

Examiner Norwood: You received these two letters, didn't you?

The Witness: Yes.

Examiner Norwood: Did you reply to those letters?

The Witness: I don't think I did, your Honor.

Examiner Norwood: Did you act in any way on them?

4310 The Witness: No, sir. I followed the appointment that was indicated in this previous exhibit.

Examiner Norwood: Yes.

By Mr. Wooden:

Q. Did you have anything to do with the preparation of the brief that is referred to in them there?

A. No, sir.

Q. Do you say, Mr. Reiter, that Mr. Mehren appeared in this matter, as indicated by 1022-J, purely as a volunteer, and without any arrangement or without the knowledge of any one that he was going to appear on behalf of the Institute?

A. I can answer that positively that he did.

Q. He just assumed to act, and without any authority or any knowledge on the part of anybody beforehand that he was going to do so?

A. I will be glad to make as brief an explanation as I can as to how that happened in my opinion.

Q. All right.

4311 Examiner Norwood: I shall ask him to explain it from the standpoint of his own knowledge.

The Witness: As a matter of fact, your Honor, I do not know from my own knowledge.

Examiner Norwood: Did your Cement Institute through you, or any other official, confirm any of these things

4312 done in whole or in part, any of these things done by Mr. Mehren and reported here?

The Witness: Did we what? I did not get that.

Examiner Norwood: Confirm.

The Witness: No, sir.

Mr. Zimmerman: Approve them?

Examiner Norwood: After receiving these. (Indicating.)

The Witness: No, sir.

By Mr. Wooden:

Q. Did you notify anybody that Mr. Mehren had no authority to speak for the Institute?

A. No, sir.

4313 Mr. Wooden: If the Examiner please, I have another exhibit numbered here and I would like to have it considered with those—Exhibit 1022-N and O.

By Mr. Wooden:

Q. Will you identify that as a circular put out by you to the members of the Institute dated July 10, 1935?

A. Yes, sir.

Mr. Wooden: I offer that in evidence.

Mr. Leisure: We have no objection to this exhibit, Your Honor.

(COM. EX. 1022-N and O was offered and received in evidence.)